313 U.S. 593

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IN THE

Supreme Court of the United States

No. 1050

HOWELL VAN AUKEN, Administrator with Will Annexed of Estate of Lila Eddy Doebler, and DEAN LUCKING, Guardian Ad Litem of Richard Cleveland and Lila Eddy Cleveland, et al.,
Petitioners and Appellants below,
vs.
SECOND NATIONAL BANK AND TRUST COMPANY of Saginaw, Michigan, as Trustee, etc., C. K. EDDY AND SONS, a Corporation, and CHARLOTTE B. MORGAN,
Respondents and Appellees below.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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SECOND NATIONAL BANK AND TRUST COMPANY of Saginaw, Michigan, as Trustee, etc., C. K. EDDY AND SONS, a Corporation, and CHARLOTTE D. MORGAN,
Respondents and Appellees below

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

To: The Honorable Charles Evans Hughes, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your Petitioners respectfully show:

SUMMARY STATEMENT OF MATTERS INVOLVED

I. The complaint in this cause filed by Mrs. Doebler's Administrator—does not ask a rescission of the contract of March 11, 1920—but

(1) that Walter Eddy (her brother) be held a trustee as of his death in 1918 of Mrs. Doebler's 7812½ shares taken by him from her in 1908—and

(2) that Arthur Eddy's Estate, namely, his trustee, Second National Bank and Trust Company—and his legatee widow, Charlotte D. Morgan, be required to pay Mrs. Doebler's administrator the difference, as damages, between the true, fair value of her shares in C. K. Eddy and Sons in 1920—and the sum of $760,000 actually paid her under the agreement of March 11, 1920—Exhibit A. R. 33, under the authority of

Blakeslee v. Wallace, 45 Fed. (2) 347 (6 C. C. A.)

Bollstrom v. Power Car Company, 208 Mich. 15

The family holding corporation, C. K. Eddy and Sons, was owned in January, 1908, as follows:

(1) Walter S. Eddy ..... 9375 shares

(2) Lila Eddy Doebler ..... 7812½ shares

(3) Arthur D. Eddy ..... 7812½ shares

II. On January 30, 1908, Lila Eddy Doebler assigned her 7812½ shares to Walter S. Eddy by the agreement Exhibit 18, Record 159, in return for an annuity of $15,000 per year and $48,000 in cash.

III. On August 4, 1918—Walter S. Eddy died, intestate—leaving as his sole heirs at law (1) his sister, Mrs. Doebler, and (2) his brother, Arthur Eddy.

Walter Eddy died holding of record—as absolute owner thereof—his original 9375 shares and the 7812½ shares taken from Mrs. Doebler by Exhibit 18, in January, 1908.

IV. On March 11, 1920, the surviving brother, Arthur D. Eddy, bought all Mrs. Doebler's rights in C. K. Eddy and Sons and Walter Eddy's Estate—on the *positive representation* by Arthur Eddy (by the sworn appraisal and inventory filed in the Probate Court, by him, as administrator of Walter's Estate —See Exhibit A, R. 40, 43)—that all Mrs. Doebler then owned, and had to sell, as one of Walter Eddy's two heirs at law, was one-half of Walter's block of 9375 shares—valued at $150 a share.

In other words—the representation in 1919 to Mrs. Doebler was that all she owned in C. K. Eddy and Sons was (one-half of 9375) 4687½ shares, worth $150 a share—and that the corporation's net worth was only about $2,600,000 at Walter Eddy's death in 1918.

V. Petitioner and Appellant Administrator (for Mrs. Doebler—who died in 1938)—contends that

(1) Either Walter Eddy was, in equity, a trustee for Mrs. Doebler of her 7812½ shares in the years of 1908 to his death in 1918—and consequently upon his death—

Mrs. Doebler, in fact, owned 12,500 shares of C. K. Eddy and Sons (made up of her original 7812½ shares—and one-half of Walter's original 9375 shares)—or

(2) Walter Eddy owned absolutely at his death in August, 1918,—his original 9375 shares and

Mrs. Doebler's 7812½ shares—or a total of 17,187½ shares out of 25,000 shares—and consequently Mrs. Doebler—as his equal heir—owned one-half thereof, or 8593¾ shares.

VI. In 1919 and 1920, Arthur Eddy was President of C. K. Eddy and Sons of Saginaw, Michigan—and Administrator of his brother, Walter Eddy's Estate. He occupied a fiduciary relationship to his sister, Mrs. Doebler, an invalid, who then resided in Baltimore, Maryland.

VII. Although Arthur Eddy, in buying in March, 1920, his sister, Mrs. Doebler's rights in C. K. Eddy and Sons, positively stated and represented to her—by the Recitals in the contract of purchase of March 11, 1920—that

(a) C. K. Eddy and Sons was in 1918 only worth $2,600,000—yet

(b) On final hearing it was proved by Arthur Eddy's sworn tax protests filed with the Government that the Company was actually worth $4,411,000 in 1918, see Exhibit 112, R. 358, 456.

Even in the pleadings in this very case—the defendants—being the assigns and representatives of Arthur Eddy (who died in 1925) made a deliberate effort to *actively conceal* from Mrs. Doebler's Administrator the true value and worth of the family holding corporation, C. K. Eddy and Sons, in 1918, when Walter Eddy died.

Although it was discovered near the end of the final hearing in the District Court that C. K. Eddy and Sons was actually worth in 1918, the huge sum of $4,411,000 as sworn to by Arthur Eddy in tax

proceedings with the Government. See Exhibit 112, R. 358, 456—

yet in the answer of C. K. Eddy and Sons (R. 31) adopted by all the other defendants—it was positively stated—with no possible purpose other than to mislead Mrs. Doebler's administrator, Howell Van Auken,

that all that C. K. Eddy and Sons was worth at Walter Eddy's death in 1918 was $1,800,000. See paragraph (p) of answer—R. 31.

VIII. And in buying Mrs. Doebler's interests in her brother Walter Eddy's Estate in March, 1920, Arthur Eddy falsely misrepresented in his contract with her (Exhibit A, R. 33) that all the shares the deceased brother Walter Eddy owned in C. K. Eddy and Sons totalled 9375 shares and further falsely stated that Walter Eddy had transferred Mrs. Doebler's 7812½ shares (taken from her in 1908) to C. K. Eddy and Sons in 1914—whereas in fact, no such transfer or assignment of the 7812½ shares to the Company was ever made by Walter Eddy—prior to his sudden death in August, 1918, without a will.

IX. Thus by the contract of March 11, 1920, between brother and sister (Arthur Eddy and Mrs. Doebler), Mrs. Doebler was paid for—4687—shares (one-half of Walter Eddy's 9375 shares) in a Company represented by the brother, its president, to be worth only $2,600,000.

X. Upon the uncontradicted proofs before the District Court—Mrs. Doebler actually owned in March, 1920 —8593¾ shares (one-half of her brother, Walter

Eddy's, total of 17,187½ shares) in a family company, actually worth at least $4,411,000. See Exhibit 112, R. 358, 456.

XI. The Lower District Court waved these frauds aside by claiming that Mrs. Doebler must have known she was thus being defrauded.

See his Findings at pages 89 to 98 of the Record.

Neither the oral opinion nor the Findings and Conclusions of the District Judge were ever published in the Federal Reporter.

XII. The Honorable Circuit Court of Appeals for the Sixth Circuit—affirmed the Lower District Court's judgment—

practically without any opinion at all (117 F.[2] 938) merely saying:

> "We find in the record abundant substantial evidence to support the findings of fact of the District Court upon which judgment dismissing the counter-claims was based." (R. 503.)

XIII. Thus, no decision, discussion or opinion was ever given or written by either of the Lower Courts as to how Mrs. Doebler's 7812½ shares (taken from her in 1908 by her brother Walter Eddy) ever got into the C. K. Eddy and Sons Company—as so-called treasury stock.

For if they never were legally transferred out of Walter Eddy's name and Estate as petitioners and appellants claim—then Mrs. Doebler owned 8593¾ shares (instead of only 4687½ shares) and in a Holding Company worth $4,411,000 in 1918, when Walter Eddy died—instead of a Company worth

only $2,600,000—as represented to Mrs. Doebler by her brother, Arthur Eddy in the contract of March 11, 1920—Exhibit A. R. 33.

XIV. The sister's (Mrs. Doebler) original 7812½ shares were taken from her in January, 1908, by her older brother Walter Eddy (who died in August, 1918, intestate)

by the terms of the contract of January 30, 1908 —Exhibit 18, R. 159,

(a) For an annuity of $15,000 a year, and

(b) About $48,000 in cash.

The Record now shows without dispute that the family holding corporation and its subsidiary one-half interest in the co-partnership of Eddy and Glynn, actually made in net profits in the four preceding years of 1904, 1905, 1906 and 1907—the huge sum of $1,092,526.52, (R. 61 and 346)—

of which the sister's share (her 7812½ shares—31%) was $338,520.00.

These huge profits were not declared as dividends in those years—but were a part of the family holding corporation's assets of $4,411,000 in 1918—when the brother, Walter Eddy, died.

REASONS RELIED ON FOR ALLOWANCE OF WRIT

I. The decision of the Circuit Court of Appeals, by a short Per Curiam opinion (R. 502) merely adopted the Conclusions of the District Court—was erroneously made and without oral arguments or briefs in the District Court—and where the record showed conclusively that a *cestui que* trust (an invalid sister) had been defrauded out of at least $585,000 in 1920, by her older brother, Arthur Eddy, in a stock deal, by means of two conclusively proved misrepresentations, namely:

(a) That the invalid sister only owned 4687½ shares in the family holding Corporation—when in fact she actually owned at least 8593¾ shares, and

(b) That this family holding corporation was only worth in 1918—$2,600,000—when in fact it was actually worth $4,411,000—as sworn to afterwards by her brother Arthur Eddy in tax proceedings with the Government—See Exhibit 112, R. 358, 456.

NOTE: A full discussion of the District Court's Findings and Conclusions will be found in Appendix A to the Brief in support hereof.

II. The decision of the Circuit Court of Appeals—filed February 14, 1941—a mere ten days after the case was submitted on oral argument—although appellants had been granted ten days to file additional briefs—

was not a decision on the merits—consistent with the importance of this case and the heavy losses suffered by a *cestui que* trust—who is a ward of the Court—and always under its protection.

III. In neither opinion by either of the Lower Courts is there cited a single authority for their conclusions against appellants' manifest right of recovery.

IV. No decision was made by either of the Lower Courts determining whether the letter of February 5th, 1914 (Exhibit 17, R. 158) was an assignment of the sister's (Lila Eddy Doebler) 7812½ shares to the family Holding Company—or only an assignment of the income thereon—

and no issue on this most important question was raised by the pleadings.

V. The decision of the Circuit Court of Appeals holding that Walter Eddy had acquired his sister, Mrs. Doebler's, 7812½ shares in 1908 without fraud and upon an adequate and fair consideration was and is clearly erroneous.

VI. The decision of the Sixth Circuit Court of Appeals was erroneous in holding that the invalid sister's administrator had the burden of proof to show that her brother Walter Eddy had defrauded her in 1908 by taking from her, her 7812½ shares for an annuity of $15,000.00 and $48,000 cash—when

(a) Her shares had earned in net profits in the four years of 1904 to 1907, the sum of $338,520.00 and were worth reasonably

(b) upwards of $900,000,

when it is also considered that after Mrs. Doebler's older brother, Walter Eddy, had died suddenly in August, 1918, without a will—Mrs. Doebler wrote her brother, Arthur Eddy, on September 23, 1919, that:

"* * * I feel that it was never Walter's intention, and certainly not mine, to sell my stock outright for $15,000 a year, it having been Walter's intention to make such arrangement as would protect me and give me a substantial living which would be guaranteed by him. * * *" (R. 253, 254.)

And again, on December 15, 1919, the sister wrote her brother, Arthur Eddy, that:

"* * * The arrangement which originally made was in perfect good faith on his part and was done for my protection and yet the $15,000 annuity was merely a tentative arrangement by Walter. The figure of $15,000 did not represent the fair value of my interest in the company * * * Walter always said that at some time he would straighten out my affairs definitely so that I should receive the fair value of the stock in the company which I turned over to him at his request, and his untimely and sudden death prevented him from carrying out this promise or understanding. * * *" (R. 263, 264.)

Both of these letters were offered in evidence by defendants and appellees (R. 253, 263) and should conclusively place the full burden of proof upon them, as representatives and assigns of Walter Eddy, to fully justify Walter Eddy's taking of Mrs. Doebler, his sister's shares from her in January, 1908, for a consideration of annual interest of only about 2% of their fair worth—and nothing whatever for the principal of $900,000 of the fair value of her shares.

Wherefore, your petitioners pray that a Writ of Certiorari issue under the seal of this Court, directed to the Circuit Court of Appeals, Sixth Circuit, commanding said Court to certify and send to this Court a full and com-

plete transcript of the record and of the proceedings of said Court had in the case numbered and entitled on its Docket,

No. 8336

HOWELL VAN AUKEN, Administrator with Will Annexed of Estate of Lila Eddy Doebler, Deceased, and DEAN LUCKING, Guardian Ad Litem of Richard Cleveland and Lila Eddy Cleveland, et. al.

Appellants

vs.

SECOND NATIONAL BANK AND TRUST COMPANY of Saginaw, Michigan, as Trustee, etc. C. K. EDDY AND SONS, a Corporation, and CHARLOTTE D. MORGAN,

Appellees

to the end that this cause may be reviewed and determined by this Court as provided by the Statutes of the United States; and that the decree therein of said Circuit Court of Appeals be reversed by this Court and for such other and further relief as this Court may deem proper.

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Detroit, Michigan.

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SECOND NATIONAL BANK AND TRUST COMPANY of Saginaw, Michigan, as Trustee, etc., C. K. EDDY AND SONS, a Corporation, and CHARLOTTE D. MORGAN,
Respondents and Appellees below

BRIEF FOR PETITIONERS, ADMINISTRATOR AND GUARDIAN, IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

OPINIONS OF COURTS BELOW

The oral opinion of the District Court was not printed in the Federal Reporter, nor was its Findings which are at pages 89 to 98 of the Record.

The Per Curiam opinion of the Circuit Court of Appeals is reported in 117 Fed. (2d) 938, and gives no discussion of the Facts or Statement of the Conclusions of the Two Lower Courts or any authorities in support thereof.

II.

JURISDICTION

The date of the decree to be reviewed is February 14, 1941, when the judgment of the District Court was affirmed by the Circuit Court of Appeals.

Appellate jurisdiction is based upon Section 240 (Amended) of the Judicial Code.

III.

SPECIFICATION OF ERRORS

The errors in the decision of the Circuit Court of Appeals, which are relied upon by petitioners are set out in the statement of "Reasons Relied Upon for the Allowance of Writ" in the accompanying petition for writ of certiorari.

Petitioners rely upon, and will urge before this Court, all of the errors therein assigned.

IV.

TWO MAIN QUESTIONS FOR DECISION

First: What was the fair worth of Mrs. Doebler's 7812½ shares in January, 1908?

If, as appellant administrator contends, they were worth from $900,000.00 to $1,000,000.00—then was she defrauded by the sale, Exhibit 18?—since the $15,000 a year annuity—was not even two per cent interest on the principal of $900,000.

Second: How many shares did Lila Eddy Doebler actually own when her brother, Walter Eddy, died in August, 1918, and what were they fairly worth?

NOTE ONE:

Since Arthur Eddy, as President of C. K. Eddy and Sons—swore in tax proceedings that C. K. Eddy and Sons as of December 31st, 1918, was actually worth net $4,411,000—and

not just $2,600,000 as represented by Arthur Eddy—in the sworn appraisal filed in the Probate Court in Walter's Estate—and attached as an Exhibit to the Contract of March 11, 1920—(R. 33)

it is apparent—that *in the deal of March 11, 1920, Mrs. Doebler was only paid,* by her brother Arthur Eddy, for

(1) 4687½ shares at $150 per share—*when she should have been paid for*

(2) at least, 8593¾ shares at $180 a share, for Mrs. Doebler—as one of two equal heirs of Walter

Eddy (who died intestate in 1918) *was absolutely entitled* to one-half of the 17187½ shares owned by him when he died, or

(3) if Walter Eddy held her 7812½ shares in trust for her—then Mrs. Doebler owned 12,500 shares at $180 per share, after Walter Eddy's death.

NOTE TWO:

The complaint in this cause filed by Mrs. Doebler's administrator—does not ask a rescission of the contract of March 11, 1920—but

(1) that Walter Eddy be held a trustee as of his death in 1918 of Mrs. Doebler's 7812½ shares taken from her in 1908—and

(2) that Arthur Eddy's Estate, namely, his trustee, Second National Bank and Trust Company—and his legatee widow, Charlotte D. Morgan be required to pay Mrs. Doebler's administrator the difference, as damages, between the true, fair value of her shares in C. K. Eddy and Sons in 1920—and the sum of $760,000 actually paid her under the agreement of March 11, 1920—Exhibit A, R. 33, under the authority of

Blakeslee v. Wallace, 45 Fed. (2) 347 (6 C. C. A.)

Bollstrom v. Power Car Company, 208 Mich. 15

SUMMARY OF ADMITTED FACTS

POINT I

BOTH THE 1908 AND 1920 DEALS WERE USED BY ARTHUR EDDY TO DEFRAUD HIS SISTER, MRS. DOEBLER

I. *The deal of January 30, 1908, Exhibit 18, R. 159.*

(a) Mrs. Doebler's 7812½ shares in C. K. Eddy and Sons were taken from her by her older brother, Walter Eddy, for an annuity of $15,000.

(b) Both brothers, respectively the President and Secretary of C. K. Eddy and Sons, actively concealed from Mrs. Doebler that her 7812½ shares were then worth upwards of $900,000 and had earnings in the years 1900 to 1907 inclusive of $484,460.

On this subject of the huge earnings or profits, of Mrs. Doebler's 7812½ shares, in the years 1900 to 1907,—it is most important for this Honorable Court to note and keep in mind that *Arthur Eddy actively participated in this fraud of his brother Walter, of January 1908*—by false reassurances made to his sister in 1919 and 1920, namely:

(a) On October 2nd, 1919, Arthur Eddy wrote his sister, Mrs. Doebler, at Baltimore, that:

> "Also, please remember that I was not a party to the contract you made with Walter, and in no way did I influence you in your action. *Please, however, do not understand that I feel it was anything but a wise move on your part and for your good*" (R. 255).

(b) Then under date of March 11, 1920, Arthur Eddy made his contract with Mrs. Doebler, taking

from her, in reality, one-half of C. K. Eddy and Sons worth at least, $2,200,000 for $760,000.

In this contract of 1920, Arthur Eddy was very careful to obtain Mrs. Doebler's waiver of any rights in her 7812½ shares, taken from her in 1908 by her brother, Walter.

For Arthur Eddy deliberately inserted in the 1920 contract—three all important and material, false statements, which related to, and had a direct bearing on, the 1908 deal, namely:

First Insert in Contract:

That in January, 1908, the "accrued and accumulated dividends and earnings on said shares of stock, amounted at that time * * * to $4524.92 (R. 35).

This was false, for the "accumulated earnings" on Mrs. Doebler's shares then amounted to nearly $500,000.

Second Insert in Contract:

That Mrs. Doebler's 7812½ shares had been "sold, assigned and transferred to C. K. Eddy and Sons" by Walter Eddy in his lifetime (R. 35).

This material statement was absolutely false—as appellant points out in the Summary and Reasons *ante.*

It was a vitally material, mis-statement—because if Walter Eddy had not so assigned and transferred her 7812½ shares to the Company—then upon Walter Eddy's death, intestate, in 1918—Mrs. Doebler automatically inherited one-half thereof—or 3906 shares—

almost as many more shares—as Arthur Eddy actually paid her for (as the owner of one-half of Walter's original 9375 block of shares).

Third Insert in Contract:

That C. K. Eddy and Sons, upon Walter Eddy's death in 1918, was only worth about $2,600,000,

when, in fact, Arthur Eddy (after he made his March, 1920, deal with Mrs. Doebler) actually swore, in tax proceedings with his Government, that C. K. Eddy and Sons was worth $4,411,000 on December 31, 1918 (R. 456).

This misrepresentation—accomplished largely by the false inventory and appraisal attached to the contract of March 11, 1920 as Exhibit B (R. 40-43), gave Mrs. Doebler the false information that her family company was only worth in 1919 about one-half its actual value. Had she known its true, real value at that time of about $4,500,000 she would have known the $15,000 annuity given her for her shares in 1908 was wholly inadequate.

II. *The deal of March 11, 1920, Exhibit A, R. 33.*

(1) In the corporation, C. K. Eddy and Sons whose assets were worth $4,657,000 in January, 1920 (R. 422), with 25,000 shares outstanding—*Mrs. Doebler* (as one of the two equal heirs of her brother, Walter Eddy) *was, upon his death, in August, 1918, the owner of:*

(a) One-half of the 17,187½ shares standing of record in Walter Eddy's name at his death—worth $180 a share, namely, $1,546,830, or

(b) One-half of the 9375 shares (originally owned by Walter Eddy) and her own 7812½ shares —making a total of 12,500 shares—worth upwards of $180 a share—namely, $2,250,000.

(2) *But* Arthur Eddy, the younger brother, and President of C. K. Eddy and Sons, in 1919, 1920, actually misrepresented to his sister, Mrs. Doebler, by at least four separate and distinct misrepresentations:

1st. *That* all Walter Eddy owned at his death in August, 1918, was 9375 shares worth $150 each or $1,403,250—see the inventory and appraisal (R. 43).

In fact, Walter Eddy owned of record 17,187½ shares worth $180 a share—

2nd. *That* Walter Eddy had actually and legally transferred Mrs. Doebler's 7812½ shares to C. K. Eddy and Sons before his death.

As a matter of fact—there is no foundation in the record for this contention of appellees—

3rd. *That* C. K. Eddy and Sons was only worth net about $2,600,000 and that since Mrs. Doebler's 7812½ shares had been put into the Company's treasury by Walter Eddy in his lifetime, this left outstanding only 17,187½ shares—each worth $150 of which Walter Eddy died owning 9375—and, therefore, Mrs. Doebler only inherited one-half of the 9375 shares—or 4687½ shares worth $150 a share—

NOTE: In fact there were outstanding 25,000 shares of which Walter Eddy owned, of record, 17187½ shares—worth $180 a share—instead of only the 9375 shares at $150—as misrepresented.

Instead of a company worth only about $2,600,000 in 1919—it was, in fact, worth $4,411,000 as of December 31, 1918—as sworn to by Arthur Eddy (R. 456) and $4,657,000 on January 1, 1920 (R. 422).

In 1919—Arthur Eddy withheld from C. K. Eddy and Sons' books—

(a) $606,000 of profits in Eddy and Glynn (R. 327), and

(b) $950,000 marked "Reserve" which was actual assets, and was returned to the C. K. Eddy and Sons "assets" account after Mrs. Doebler was prevailed upon in March, 1920 to sell her interests in the Company for a mere $760,000.

4th. *That* the "accrued and accumulated dividends and earnings" upon Mrs. Doebler's 7812½ shares in January, 1908, were only $4524.92 (see this recital put in the contract of March 11, 1920 by Arthur Eddy, R. 35)

and, therefore, that Mrs. Doebler's surrender of her 7812½ shares in January, 1908, to her brother, Walter Eddy was upon a fair consideration—and she should make no complaint in 1920—but should reaffirm the deal of 1908.

NOTE: This was a most fraudulent mis-statement of fact by Arthur Eddy in 1920—*to prevail upon Mrs. Doebler to ratify the fraud of 1908.*

In fact, the undisputed record now shows (R. 170 and 346) that the *"accumulated" earnings* or profits on Mrs. Doebler's 7812½ shares in January, 1908, were nearly $500,000 in the years 1900 to 1907—and that all she received was $25,000 in dividends (R. 56).

That Arthur Eddy was actively engaged in reassuring his sister, Mrs. Doebler, in 1919, that she had not suffered by the 1908 deal with her brother, Walter, is shown by Arthur Eddy's letter of October 2, 1919, to her, in which he says:

> *"Please, however, do not understand that I feel it was anything but a wise move on your part and for your good"* (R. 255).

POINT II

SUMMARY OF FACTS LEADING TO THE MARCH 11, 1920, DEAL

The following facts are not in dispute—they appear from the books and records of C. K. Eddy and Sons—produced in open Court by Appellees—

(1) Mrs. Doebler transferred her original 7812½ shares of C. K. Eddy and Sons, in January, 1908, to her older brother, Walter S. Eddy, for an annuity of $15,000 per year, which was paid monthly at $1250.00.

(2) After his death, and until March, 1920, these $1250.00 monthly checks were receipted for in the following form, namely:

> "$1250.00 Baltimore, Md. March 1, 1919
>
> Received from C. K. Eddy and Sons, of Saginaw, Michigan, Twelve Hundred Fifty Dollars in full payment and satisfaction of the installment due me for the month of March, 1919, under the agreement between me and Walter S. Eddy, bearing date January 30, 1908.
>
> Lila E. Doebler
> By V. S. Doebler
>
> (Please sign and return)"

Note that each receipt for all these years from 1908 to 1920 always referred to this money as due "under the agreement between me and Walter S. Eddy, bearing date, January 20, 1908."

(3) *Never prior to Walter Eddy's death on August 4, 1918, did Walter Eddy transfer Mrs. Doebler's 7812½ shares out of his own name,* for:

(a) All annual reports, stock certificates and stock ledger books and all minutes of all stockholders' meetings of C. K. Eddy and Sons always showed Walter S. Eddy as the owner of 17187½ shares—which of course, included Mrs. Doebler's 7812½ shares.

See R. 180 to 189, 468 to 479, 153.

(b) It is most important and very significant that C. K. Eddy and Sons' Annual Report filed with the Secretary of State of Michigan, for the year 1916, shows Walter Eddy owning 16,687½ shares and G. L. Humphrey 500 shares, and Arthur D. Eddy 7812½ shares (R. 477).

This report was signed by both Walter S. Eddy and Arthur D. Eddy (R. 478) and verified by Mr. Humphrey, as Secretary on February 24, 1917 (R. 479).

It is conceded Mr. Humphrey's 500 shares belonged to Walter Eddy (R. 52)—thus showing him the owner of 17187½ shares.

This 1916 Annual Report was verified and filed three years after the letter of February 6, 1914, Exhibit 17 (R. 158) was purported to have been written.

It is inconceivable that the letter of February 16, 1914, was intended to take Mrs. Doebler's 7812½ shares out of Walter Eddy's name and ownership and put them into C. K. Eddy and Sons.

The 1917 Annual Report was verified and filed in February, 1918 (R. 475) and also showed Walter Eddy owning 17187½ shares.

It was only after Walter Eddy had died in August, 1918, that the fraud practiced upon Mrs. Doebler, of placing her 7812½ shares out of Walter Eddy's Estate was attempted —so that Mrs. Doebler, as one of his two equal heirs would not inherit any of her 7812½ shares.

This is clearly shown again by the C. K. Eddy and Sons' stock ledger, Exhibit 16, R. 148—which showed no shares had ever been transferred from Walter Eddy to C. K. Eddy and Sons.

On page 153, Miss Durham, the Secretary, testified:

> "Q. And does that complete these stock ledger accounts of Walter S. Eddy?
> A. It does.
> Q. And prior to his death it doesn't appear from that stock ledger that any stock was ever transferred from Walter S. Eddy to C. K. Eddy and Sons, does it?
> A. No, it doesn't * * *" (R. 153).

(c) All annuity payments in the years 1908 to August 1918, of $1250.00 per month were made by Walter Eddy's personal checks drawn on his own personal bank accounts (R. 430).

(d) No assignment of the contract of January 30, 1908, or any rights or interests thereunder was ever executed by Walter S. Eddy to C. K. Eddy and Sons (R. 159).

(e) No notice or knowledge was ever given to or received by Mrs. Doebler—

prior to Walter Eddy's death—that her brother Walter had transferred her 7812½ shares (or any rights under the contract of January 30, 1908) to C. K. Eddy and Sons.

For great care was always used to make the form of the annuity receipts the same—both before and after 1914—and right up to Walter Eddy's death in 1918—the receipts always recited that the payment was made "under the agreement between me and Walter S. Eddy, bearing date January 30, 1908."

(f) C. K. Eddy and Sons never assumed any obligations under, nor accepted any assignment of, this contract of January, 1908 (R. 348).

No resolution of C. K. Eddy and Sons' directors was ever passed on the subject—nor was the subject ever brought to its attention. See Records of Directors' meetings at R. 183 to 190.

(g) C. K. Eddy and Sons' books contain no entries to show that any of C. K. Eddy and Sons' money or funds ever went to pay Mrs. Doebler any of her $15,000 annuity —prior to Walter Eddy's death in August, 1918 (R. 430).

(h) Mrs. Doebler believed and understood up to her brother Walter Eddy's death in August, 1918, that he owned her 7812½ shares—and she looked to him to make proper restitution some day.

See her letter of December 15, 1919, R. 263-4.

(4) Arthur Eddy's deal with Mrs. Doebler in March, 1920, for her rights—in her brother Walter Eddy's estate and C. K. Eddy and Sons was on the positive representation of Arthur Eddy that his brother, *Walter Eddy, had died with only 9375 shares worth only $150 per share.* See the appraisal and inventory of brother's Estate attached to the March, 1920 contract as an Exhibit A, (R. 40 to 45).

This appraisal was filed in the Probate Court by Arthur D. Eddy—as administrator of his brother Walter's Estate —see page 298 of Record—and this appraisal was actually

stated in the sale agreement of March 11, 1920 made with Mrs. Doebler, to be "a full, true and complete inventory of said estate * * *" (R. 33).

(5) But Walter Eddy died, in 1918, holding the legal title to 17187½ shares—out of 25,000—in a company, C. K. Eddy and Sons—whose assets Arthur Eddy afterwards swore in tax proceedings—had a net worth of $4,411,000—as of December 31, 1918 (See R. 419-21-22).

(6) Even in the final hearing before the District Court —and in the pleadings filed by appellee C. K. Eddy and Sons—

the appellees made every effort to conceal from the appellant administrator the actual, true worth of C. K. Eddy and Sons in 1919 and March, 1920—as disclosed by its records, as appellant will point out.

(7) *It was always concealed* from Mrs. Doebler—to the day of her death in 1938—that her 7812½ shares of C. K. Eddy and Sons (taken from her in January, 1908, by her brother, Walter Eddy, for an annuity of $15,000)

had actually earned net profits in the years of 1901 to 1919, inclusive, amounting to a total of $1,071,627 (R. 170, 346).

Mrs. Doebler sold her shares in 1908, for an annuity of $15,000—having only been paid in the years 1901 to 1907—dividends averaging about $4,000 per year.

Mrs. Doebler, therefore, was paid by her two brothers, Walter and Arthur Eddy, President and Secretary of C. K. Eddy and Sons (in control of the company and all its books and records—located 800 miles from Mrs. Doebler's home in Baltimore)—

(1) An average in the nineteen years of 1901 to 1919—of about $10,000 per year (first in dividends

and after 1907 in the annuity) *as her share of her 7812½ shares' income*—but

(2) *Her 7812½ shares actually earned in net profits in those years of 1901 to 1919 inclusive—an average of $53,000 per year, or over five times what they paid her.*

(8) And Arthur Eddy made Mrs. Doebler believe that the $760,000 C. K. Eddy and Sons (he was the only other stockholder) was paying to her for her one-half of Walter Eddy's 9375 shares (she in reality then owned one-half the company's 25,000 shares or 12,500 instead of merely the 4687½ shares)—was being paid to her in "gilt-edged securities"—and that this left C. K. Eddy and Sons with only securities "which may fluctuate in value and which have the element of chance • • •."

See Mrs. Doebler's letter of September 23, 1919, R. 253, and see the answer of *C. K. Eddy and Sons* (R. 29) stating that:

> "And finally reached an agreement with her brother which took from C. K. Eddy and Sons practically all of its gilt-edged securities, leaving only the speculative and businessmen's investments therein."

But upon final hearing, R. 458, it was proved that after Mrs. Doebler was paid the $760,000 in market value of securities in March, 1920, that C. K. Eddy and Sons had left over twice as much in "gilt-edged securities" as had been turned over to Mrs. Doebler.

(9) It was not until appellant administrator (after final hearing was over one-half completed) had hired certified public accountants to examine C. K. Eddy and Sons books—*that it was found that the statements made in*

(1) Appellee, C. K. Eddy and Sons sworn answer (R. 31) that the Company was only worth $1,800,000 in 1918—and

(2) the testimony of C. K. Eddy and Sons' Secretary, Miss Durham, that the company's surplus as of January 1, 1920—was only $2,398,772.85 (R. 172)

were entirely false.

And Mr. Collins, the accountant, was then able to show the

(1) sworn tax values of $4,411,000—and

(2) that the above "surplus of $2,398,772.85" *was short* by at least $1,600,000 because in two items alone there were found:

(a) hidden profits belonging to C. K. Eddy and Sons of over $605,000, and a

(b) reserve account of $950,000 that *was in fact surplus assets.*

(See Mr. Collins' testimony, R. 421, 325 to 328.)

(10) And these facts remained a complete secret until after Mrs. Doebler had died—and until her administrator had (during the final hearing of this cause) examined C. K. Eddy and Sons' books with expert accountants—during a recess in the hearings in open court.

See pages 172, 177, 178 of the Record for the testimony of Miss Durham, C. K. Eddy and Sons' Secretary—and in charge of its books and records since 1915—where she attempted to make it appear that the company's *surplus assets* on January 1, 1920, were only $2,398,772.85.

Again on page 203 of the Record, Miss Durham, C. K. Eddy and Sons' Secretary, attempted to make it appear that C. K. Eddy and Sons actually owed the co-partnership of Eddy and Glynn the sum of $320,000.

Miss Durham testified that:

"Q. What entries are there upon the books of C. K. Eddy and Sons immediately preceding March, 1920, which refer or direct themselves to this Eddy and Glynn co-partnership and its assets? Did you carry an account, in other words, of this co-partnership on the books of C. K. Eddy and Sons throughout these years preceding 1923, and particularly preceding March, 1920?

A. Yes, there was an account of Eddy and Glynn with C. K. Eddy and Sons books for years.

Q. In what way was that carried; a list of assets, or what?

A. Just an account of Eddy and Glynn. • • •

Q. Is this the half interest belonging to C. K. Eddy and Sons in Eddy and Glynn, this $463,000, or such part of it as is surplus?

A. This shows a credit balance on C. K. Eddy and Sons' books and the Eddy-Glynn account. That would mean instead of being an asset to C. K. Eddy and Sons, we owed them $320,000.

Q. $320,000?

A. Right there for that balance, January 1st.

Q. You owed them money?

A. I say, that is what a credit balance would mean on C. K. Eddy and Sons' books. I don't know what makes them up.

Q. Have we got anything that will tell us what part of the assets of C. K. Eddy and Sons, as of January 1st, 1920, was represented by this half co-partnership interest of the company in the co-partnership of Eddy and Glynn?

A. The assets listed on C. K. Eddy and Sons' books did not represent the assets in Eddy and Glynn. Our connection with Eddy and Glynn is represented there in this account" (R. 202, 203).

It was only towards the close of the hearing that appellant administrator's certified accountant, Kins Collins,

cleared up this entirely misleading testimony of Miss Durham—and showed that actually C. K. Eddy and Sons had over $600,000 due it from Eddy and Glynn on January 1, 1920.

See Record 313, 326, 327.

POINT III

SUMMARY OF CONTROLLING FACTS—ALL SHOWN BY C. K. EDDY AND SONS BOOKS AND RECORDS—AND NOW UNDISPUTED BEFORE THIS COURT

(a) On January 30, 1908, Mrs. Doebler owned 31.2 per cent of C. K. Eddy and Sons, her family's Holding Company.

Her two older brothers, Walter and Arthur Eddy owned the remaining shares.

(b) Walter and Arthur Eddy were held by this Honorable Court of Appeals in *Eddy v. Eddy,* 168 Fed. 590, to have cheated their father's widow in 1908—out of her one-twenty-fourth shares in his estate—her share being valued at about $75,000—

by giving the widow less than $4000.00.

(c) Mrs. Doebler's 31.2 per cent of C. K. Eddy and Sons had actually earned in net profits in the years 1901 to 1907 inclusive *the huge sum of $483,460*—the entire net profits of the company being about $1,600,000 in those seven years (R. 170 and 346).

(d) Mrs. Doebler was paid in these seven years only a total of $25,000 in dividends.

(e) On January 30, 1908, her share in the Company was worth at least $1,000,000.

(f) Mrs. Doebler had no knowledge, in January, 1908, of these huge profits on her shares in the Company—and their great value.

Exhibit 92 (R. 465) was a statement given her by her brothers (R. 324) as of September 7, 1907, which showed her shares at the nominal (par) value thereof, namely, $10 per share.

Exhibit 92, was found among her papers after her death in 1938 (R. 324).

(g) On January 30, 1908, by Exhibit 18 (R. 159), Mrs. Doebler's brother, Walter Eddy, took her whole interest in C. K. Eddy and Sons from her for an annuity of $15,000 a year and $48,000 cash.

(h) When Walter Eddy died suddenly and intestate in 1918—he had actually made a profit on this deal of January 30, 1908, with his sister, Mrs. Doebler, of *$850,000 on the income alone of Mrs. Doebler's 31.2 per cent of the Holding Company shares*—for

(a) Mrs. Doebler's shares had net income in the years of 1901 to 1919 inclusive, of $1,071,000 and

(b) Mrs. Doebler drew in dividends and her annuity the sum of $215,000 in those years—

(c) So when Walter Eddy took over her shares in 1908 for a $15,000 annuity—he gained by the transaction—*in profits on the shares alone in those years*—the sum of over $850,000.

(d) So that if we add to this profit in income, even the mere book value in 1901 of Mrs. Doebler's 7812½ shares, namely, $227,850, we find that when Walter Eddy died in 1918, he had made an actual profit of over $1,075,000 on his one-sided deal with his sister in January, 1908.

(i) As of December 31, 1918, the year Walter Eddy died, his administrator (and sole co-heir with Mrs. Doebler) Arthur Eddy swore in estate tax proceedings that—

C. K. Eddy and Sons was then, in 1918, actually worth (net) $4,411,781.65.

(1) Therefore, in 1918, Mrs. Doebler's 31.2% of the shares of the Company was actually worth $1,-364,000 and

(2) Mrs. Doebler's one-half of her brother Walter Eddy's, 9375 shares in C. K. Eddy and Sons (for he died intestate—leaving only his brother Arthur Eddy and Mrs. Doebler) was actually worth $841,000.

(j) Therefore, it is obvious to anyone—that if Mrs. Doebler was defrauded out of her 31.2 per cent of the shares in January, 1908, and

Walter Eddy died in 1918, holding Mrs. Doebler's 31.2 per cent of the shares, in equity for her—then

her interest in C. K. Eddy and Sons in 1918—when Walter Eddy died was one-half and valued at $2,205,000.

(k) In 1919, her surviving brother, Arthur Eddy—the President of C. K. Eddy and Sons and the Administrator of Walter Eddy's Estate—filed a false inventory of Walter's Estate—in which he valued the shares of C. K. Eddy and Sons on the basis of a total value of the Company of $2,578,000—

which was a fraudulent under-statement of the Company's actual worth of about $2,000,000—for Arthur Eddy well knew C. K. Eddy and Sons had a net worth in 1918 of about $4,500,000. Its profits in the year 1919 alone were $172,000 (R. 170, 346).

In fact, in the years 1901 to 1918 inclusive, C. K. Eddy and Sons had a total net profit of $2,698,000—*which profit alone* was more than Arthur Eddy represented in 1919, to his sister, Mrs. Doebler, the C. K. Eddy and Sons was worth.

(1) In 1919 and 1920, the books of C. K. Eddy and Sons showed the C. K. Eddy and Sons surplus to be $2,398,772, as of January 1, 1920 (R. 172). The capital being $250,000—this made C. K. Eddy and Sons net worth, as carried on its books on January 1, 1920, to be $2,648,000.

To show this figure of at least $1,600,000 less than the Company's true worth—Arthur Eddy concealed over $1,500,000 of assets—by deliberately keeping them off the books of the Company (See Record pages 325 to 328).

Moreover, in June, 1919, Arthur Eddy caused to be filed C. K. Eddy and Sons annual report to the Secretary of State of Michigan showing the Company's condition on December 31, 1918, to be—

All Assets	$3,199,296.88
All Debts	492,582.96
Contingent Liability—and income tax estimated at least	300,000.00
Net Assets	$2,407,000.00

See—Exhibit 47, Record 481.

But after Arthur Eddy had purchased Mrs. Doebler's one-half interest in C. K. Eddy and Sons in March, 1920, he swore to his Government in Washington that *on this same December 31, 1918, C. K. Eddy and Sons had a net worth of $4,411,781.65* (R. 357, 358, and Exhibit 112).

And as of January 1, 1920, C. K. Eddy and Sons filed its sworn income tax report on March 9, 1921 (for the year 1920) which showed

"Total value of C. K. Eddy and Sons, Capital Stock at 1/1/20.....$4,142,396.76"
(Record 457).

(m) And so—Arthur Eddy in March, 1920 was able to buy from his sick sister—living in Baltimore, Maryland, what was actually her one-half of C. K. Eddy and Sons, worth $2,300,000—for $760,000—because Mr. Arthur Eddy had—

(1) filed in March, 1919, in his brother's estate—*a false inventory,* and

(2) concealed over $1,500,000 of assets in two items alone by keeping them off the Company's surplus accounts on its books, and

(3) wrote false and misleading letters to his sister in 1919 respecting the title to and value of her rights and interests in her brother, Walter Eddy's estate and in C. K. Eddy and Sons.

(n) Arthur Eddy died in 1925, without issue, and Mrs. Doebler's daughter, Mrs. Cleveland, and her two grandchildren are the only living, blood issue of Mrs. Doebler's father—who founded C. K. Eddy and Sons in 1893.

IN CONCLUSION—it may be said that the above stated facts—stand undisputed on the record of this appeal—

being conclusively shown by documentary evidence produced from the files and records of C. K. Eddy and Sons itself—which were always in the control of Walter Eddy and his brother, Arthur—the Holding Company's Presidents in the years 1901 to 1925.

ARGUMENT ON LAW

POINT I

MRS. DOEBLER'S RELEASE OF HER 7812½ SHARES ON JANUARY 30, 1908, WAS WITHOUT CONSIDERATION AND WILL BE SET ASIDE AS A FRAUD UPON HER HEIRS

It is respectfully submitted that Walter S. Eddy occupied, in every sense—a fiduciary relationship toward his sister in January, 1908, and

that his unconscionable bargain should be set aside.

It is further submitted that this Honorable Supreme Court has never placed its approval upon such an overreaching as this—but

has consistently held fiduciaries to strict accounting for such breaches of trust.

Let us recall briefly that in 1908, Walter Eddy was—

(1) Executor of his Father's Estate;

(2) President and largest stockholder of C. K. Eddy and Sons, the family holding company

(3) An astute business man, entirely familiar with all the assets and details of C. K. Eddy and Sons—and

(4) The trusted, older brother of an inexperienced, sickly sister—and

That Walter S. Eddy dealt with his sister—while she was

(1) In debt to C. K. Eddy and Sons—

(2) Had previously endorsed all her stock certificates over to him, without any protecting writing—and

(3) Was drawing but an average of $4,000 annually in dividends—when her stock was earning in the years 1904 to 1907 over $100,000.00 annually— of which huge profits she was purposely kept in ignorance.

A.

An Administrator or Executor occupies a fiduciary relationship to an heir and legatee.

Cowen v. Adams, 177 U. S. 471, 483.
Eddy v. Eddy, 168 Fed. 590 (6 C. C. A.); cert. denied 214 U. S. 518.
In re Bancourt's Estate, 279 Mich. 518, 526.

In *Cowen v. Adams, supra,* the Supreme Court, in its opinion, said:

> "Neither do we stop to consider the charge of fraudulent conduct on the part of the administrators, for independently of those considerations we are of the opinion that equity will not enforce this receipt or release. It was a surrender by William Means, without any consideration, of practically his whole interest in his father's estate, amounting to between $100,000 and $200,000. The administrators were acting in a fiduciary capacity. * * *
>
> While a man in the full possession of his faculties and under no duress may give away his property, and equity will not recall the gift, yet it looks with careful scrutiny upon all transactions between trustee and beneficiary, and if it appears that the trustee has taken any advantage of the situation of the beneficiary, and has obtained from him, even for only the benefit of other beneficiaries, large property without consideration, it will refuse to uphold the transaction thus accomplished. *Taylor v. Taylor,* 8 How. 183; *Comstock v. Herron,* 6 U. S.

App. 626-637, and cased cited; *1 Story's Eq. Jur.*, secs. 307, 308; *2 Pomeroy's Eq. Jur.*, secs. 951, 958, 1088. So, without considering the debatable questions presented in respect to this receipt or release, we are of opinion that the Circuit Court of Appeals was right in refusing to uphold it."

A Trustee who pays $48,000. for property worth $1,000,000 —and deliberately conceals its true worth—must account in equity.

In *Griffith v. Godey,* 113 U. S. 89, the Supreme Court held:

"A probate settlement of an administrator's account does not conclude as to property fraudulently withheld from it. * * *

The facts of this case disclose a case of deception and fraud, practiced upon a person of weak intellect, and a conspiracy to obtain his property for a consideration so grossly inadequate, as to warrant the intervention of a court of equity."

B.

AN ELDER BROTHER — "AN EXPERIENCED BUSINESSMAN" HAS THE BURDEN OF REMOVING "EVERY ELEMENT OF DOUBT OR SUSPICION THAT MAY ATTACH" TO A CONTRACT WITH HIS YOUNGER SISTER.

Bowen v. Kutzner, 167 Fed. 281 (4 C. C. A.).

"HE KNEW EVERYTHING AS TO THE CONDITION OF THE PROPERTY JOINTLY THEIRS: SHE IN EFFECT NOTHING" * * * "AND THE LAW THUS RIGHTFULLY PLACES THE BURDEN UPON HIM."

Fourth Circuit Court of Appeals Opinion in 167 Fed. at 300.

C.

INADEQUACY OF CONSIDERATION IN DEALINGS BETWEEN A TRUSTEE AND HIS *CESTUI QUE* TRUST RAISES A PRESUMPTION OF FRAUDULENT OVERREACHING.

The Court of Appeals in *Cowen v. Adams, supra,* at pages 553 of 78 Fed. Rep. said:

> "Where the transfer is of a large sum, and constitutes the whole of the property of the party making it, himself having obligations to those in need, to one standing in no need, it raises an almost insurmountable presumption that there has either been some untoward influence or gross misconception on the part of the party making it of his rights and obligations."

And at page 552, of its opinion, said:

> "The absence of adequate consideration in itself raises a presumption of unfairness which the trustee is bound to repel."

Thus in *Ballentyne v. Smith,* 205 U. S. 285, a foreclosure sale of property worth at least seven times the sum bid, was set aside, the Court saying:

> "But if there be great inadequacy slight circumstances of unfairness in the conduct of the party benefited by the sale will be sufficient to justify setting it aside."

While in *Re Jewett Oil Co.,* 86 Fed. (2) 497 (7 C. C. A.), a sale of property by a Trustee in bankruptcy worth $5,000.00 for $300. was set aside, the Court saying:

> "The assignment by its terms conveys too great an interest to the purchaser, and appellant seeks

to take advantage of the actual language of the instrument. A court of equity cannot permit this to be done. The disproportion between the sale price and the value of the contract sold (as claimed by appellants) shocks the conscience of the court."

Where a fiduciary relation exists—any transaction which amounts in fact to a gift, is presumed fraudulent in the absence of clear showing of fairness.

Kellahin v. Henderson, 81 Fed. (2) 128 (5 C. C. A.).
Thaw v. Thaw, 27 Fed. (2) 729 (2 C. C. A.)
Floyd v. Floyd, 11 Fed. (2) 841 (7 C. C. A.)

POINT II

NO TRANSFERS BY WALTER EDDY IN 1914 OF MRS. DOEBLER'S 7812½ SHARES WAS HAD TO C. K. EDDY AND SONS

The record shows conclusively that—

(1) Walter Eddy died August 4, 1918, owning of record the 7812½ shares taken from his sister under the release of January 30, 1908.

(2) No endorsement or assignment of the certificates was ever made by him.

(3) All Company records, including the stock ledgers, stock certificate book, annual reports, minutes of stockholders' meetings all stated Walter Eddy to be the owner of these shares.

(4) Walter Eddy continued to his death to pay Mrs. Doebler the $15,000 annuity in monthly payments of $1250.00 by his own personal checks drawn on his own personal bank account.

All receipts signed by Mrs. Doebler (or her husband for her) were in the same form, namely:

"Exhibit 2-d

$1250.00 May 1st, 1916

Received from Walter S. Eddy twelve hundred and fifty dollars, being payment for the month of May, 1916, as per agreement dated January 30th, 1908.

Lila E. Doebler,
By V. S. Doebler.

(Please sign and return)" (R. 445).

Therefore, it is submitted that the secret bookkeeping entries on C. K. Eddy and Sons Journal—and the letter (R. 158) of February 6th, 1914—could not transfer any title of Mrs. Doebler's 7812½ shares to C. K. Eddy and Sons.

Act 106 of the Public Acts of 1913 of Michigan, provides in part:

> "Title to a certificate and to the shares represented thereby can be transferred only,
>
> (a) By delivery of the certificate indorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby, or
>
> (b) By delivery of the certificate and a separate document containing a written assignment of the certificate or a power of attorney to sell, assign, or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby. Such assignment or power of attorney may be either in blank or to a specified person.***"

C. L. 1929, Sec. 9520; Effective August 14, 1913.

Therefore, there could be no transfer of Mrs. Doebler's 7812½ shares by Walter Eddy to C. K. Eddy and Sons, prior to his death in 1918.

Marshall v. Commissioner, et al., 57 Fed. (2) 633 (6 C. C. A.)
Bardach v. Commissioner, et al., 90 Fed. (2) 323 (6 C. C. A.)

In *Marshall v. Commissioner, supra,* this Court stated in its opinion that:

> "While Mrs. Marshall was advised by her husband that he intended to give all his holdings of capital stock to her, it is quite evident, as to those shares not transferred upon the books of the issuing companies, that there was not a complete relinquishment of dominion and control of the subject-matter of the gift, and, we think, that there was no such conveyance or assignment as operated to divest the donor of legal title or to vest such legal title in the donee, whatever may have been the equitable rights of the parties after the indorsement of the certificates in blank."

And no decision by either of the Lower Courts was made on this vital question—and no issues were framed or any claimed transfer or assignment of Mrs. Doebler's 7812½ shares was ever pleaded by the appellees and respondents.

POINT III

THE CONTRACT OF MARCH 11th, 1920, WAS FRAUDULENTLY PROCURED BY ARTHUR D. EDDY FROM HIS SISTER, MRS. DOEBLER

Upon Walter S. Eddy's death in August, 1918, his surviving brother, Arthur D. Eddy, became president of C. K. Eddy and Sons—and Administrator of Walter Eddy's estate—

What was said in the opinion in *Eddy v. Eddy* (168 Fed. 590) as to the duties of Walter Eddy as Executor of his Father's estate—

applies with equal force and reason in the dealings of Arthur Eddy in 1919 and 1920 with Mrs. Doebler, for her interests in Walter's Estate and C. K. Eddy and Sons.

And Arthur Eddy, as president of the family corporation, was under strict rules in dealing with his sister—or any other stockholder.

For it is well settled that:

I. If an officer deceitfully and fraudulently creates a materially false impression as to the "true worth" of his Company's shares—a stockholder may accept such representations as founded in "fact"—and need not make an independent verification from the books of the Company.

II. The issue is simple—did Arthur Eddy falsely and fraudulently create the impression that it was to the financial advantage of Mrs. Doebler to sell her stock to the Company on the terms of the contract of March 11, 1920?

Blakeslee v. Wallace, 45 Fed. (2) 347 (6 C. C. A.)

To the same effect—and holding that a false representation by the active head of a corporation, that a stockholder was getting fair value for his shares and making a good bargain in selling them—was actionable in an action in equity for damages and an accounting.

See—

Bollstrom v. Power Car Company, 208 Mich. 15.

And see—

Backus v. Kirsch, 264 Mich. 339, 342.
Buckley v. Buckley, 230 Mich. 504, 509.

POINT IV

THE DEFENSE OF LACHES IS NOT AVAILABLE IN THIS CASE—ARTHUR EDDY'S WIDOW AND THE CHARITABLE TRUST HAVING THEMSELVES RECEIVED THE BENEFIT OF HIS FRAUDULENT OVERREACHING OF MRS. DOEBLER IN MARCH, 1920

Cowen v. Adams, supra.
Pond Creek Coal Co. v. Hatfield, 239 Fed. 622 (6 C. C. A.)
Elk Horn Coal Co. v. Hackworth, 61 Fed. (2) 304 (6 C. C. A.)
Williams v. American Ass'n., 197 Fed. 600 (6 C. C. A.)
Liverpool, etc. Co. v. Crosby, 83 Fed. (2) 647 (6 C. C. A.)
Alexander v. Trust Company, 249 Fed. 1 (3 C. C. A.)
Harris v. Egger, 226 Fed. 398 (6 C. C. A.)
Mancourt, etc. Co. v. St. Clair, etc. Co., 260 Fed. 330, opinion by J. Tuttle

In re Brower, 51 Fed. (2) 123, opinion by Judge Simons
Angeloff v. Smith, 254 Mich. 99
Oswald v. Camac, 65 Fed. (2) 610 (5 C. C. A.)
Townsend v. Vanderwerker, 160 U. S. 171, 185, 186
McIntire v. Pryor, 173 U. S. 38
Michoud v. Girod, 4 How. (U. S.) 503
Meader v. Norton, 11 Wall. (U. S.) 442

IT IS NOT A DEFENSE TO MRS. DOEBLER'S ADMINISTRATOR'S ACTION THAT WALTER AND ARTHUR EDDY ARE DEAD — THE IMPORTANT EVIDENCE IS ALL A MATTER OF WRITTEN DOCUMENTS AND C. K. EDDY AND SONS' RECORDS, ETC.

See—

Oswald v. Camac, 65 Fed. (2) 610 (5 C. C. A.)

While in *Townsend v. Vanderwerker,* 160 U. S. 171, 185, 196, the Supreme Court said:

> "3. We are also of opinion that, under the peculiar circumstances of this case, the bill is not open to the defense of laches. It is true the advances were made at sundry times from 1879 to 1884, and the bill was not filed until 1889, but the delay is sufficiently accounted for by the intimate personal relations that had always existed between the plaintiff and Mrs. Marvin, and the unlimited confidence he had reposed in her. * * *
>
> "The question of laches does not depend, as does the statute of limitation, upon the fact that a certain definite time has elapsed since the cause of action accrued, but whether, under all the circumstances of the particular case, plaintiff is chargeable with a want of due diligence in failing to institute proceedings before he did. In this case, we think the delay is fully explained. *Gunton v. Carroll,* 101

U. S. 426. It is true that one of the parties to this alleged agreement has died, and that the court has lost the benefit of her testimony with regard to the alleged agreement. This however, is a circumstance to be considered by the court in weighing the evidence, rather than as an obstacle to the maintenance of the bill upon demurrer."

And see the case of *McIntire v. Pryor*, 173 U. S. 38.

While in *Michoud v. Girod*, 4 How. 503, this Supreme Court of the United States held that this was a case of actual fraud committed by trustees of real estate against their *cestui que* trust. A bill filed thirty-six years after the commission of the fraud was held not to have been too late. In that case a purchase by an executor through a third person, of property of the testator, was held to be fraudulent and void, though the sale was at public auction, judicially ordered, and the result of the evidence was that a fair price was paid.

Thus in Many of the Foregoing Decisions Long Periods of Delay in Bringing Suit Were Held to Be No Defense—as

(a) 22 years—*Pond, etc. Co. v. Hatfield* (6 C. C. A.)

(b) 21 years—*Elk Horn Co. v. Hackworth* (6 C. C. A.)

(c) 50 years—*Williams v. Ass'n.* (6 C. C. A.)

(d) 46 years—*Alexander v. Trust Co.* (3 C. C. A.)

(e) 9 years—*McIntire v. Pryor* (U. S. Sup. Ct.)

(f) 36 years—*Michoud v. Girod* (U. S. Sup. Ct.)

(g) 26 years—*Meader v. Norton* (U. S. Sup. Ct.)

CONCLUSION OF BRIEF

It is most respectfully submitted that:

A. Walter Eddy in 1908 and Arthur Eddy in 1919 and 1920 held fiduciary relations and duties to their sister, Mrs. Doebler—and could not profit by their deals with her for her stock interests in their family Company, C. K. Eddy and Sons.

Cowen v. Adams, supra
Eddy v. Eddy, supra

B. Nor can Arthur Eddy's legatees under his will—his widow, his niece and the charitable trust—so profit.

Cowen v. Adams, supra

C. Mrs. Doebler's 7812½ shares were obtained from her in 1908, without consideration, and Walter Eddy held them for her at his death in August, 1918, as her trustee.

D. Walter Eddy did not intend to and did not legally transfer any interest in Mrs. Doebler's 7812½ shares to C. K. Eddy and Sons in 1914 by the letter of February 6th, 1914, Exhibit 17.

Marshall v. Commissioner, supra (6 C. C. A.)

E. Mrs. Doebler in 1919, owned one-half of C. K. Eddy and Sons—and her interests were fraudulently taken from her by her brother, Arthur Eddy, by manifestly false and fraudulent representations of material facts —and she is entitled to the difference between the actual, true worth of her one-half interest in this Company's stock—and what she received from Arthur Eddy for it—

Blakeslee v. Wallace, supra
Bollstrom v. Car Co., 208 Mich. 15
Backus v. Kirsch, 264 Mich. 339
Buckley v. Buckley, 230 Mich. 504

It is further submitted to this Honorable Court that throughout the entire period of 1908 to final hearing of this case in 1938—*there was a deliberate, wilful concealment of the true value and worth of C. K. Eddy and Sons*—

First—by Walter and Arthur Eddy in their entire dealings with their sister—

Second—by the pleadings in this case—because—

(a) Mrs. Doebler's Administrator charged in his counter claim that in 1918 and 1919, C. K. Eddy and Sons was worth at least $4,500,000 (R. 12).

(b) In C. K. Eddy and Sons' Answer, filed September 14, 1938, this Company deliberately stated that it was worth at Walter Eddy's death in 1918, $1,800,000 (R. 31).

We now know that in 1924, C. K. Eddy and Sons' officers swore in their tax protests that at Walter Eddy's death in 1918, it had a net worth of $4,411,000 (R. 456).

We respectfully ask that the Petitioners be granted this Honorable Court's Writ of Certiorari—and on final hearing the full relief prayed for, namely, the difference between $760,000.00 actually paid Mrs. Doebler in 1920 by Arthur D. Eddy—and the true, actual value in 1920 of one-half of C. K. Eddy and Sons' shares owned by Walter Eddy,

namely, 17,187½ shares held by him at his death intestate in 1918.

Respectfully submited,

HOWELL VAN AUKEN, Esq.,
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Attorneys for Petitioners.

APPENDIX A

SUMMARY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW OF DISTRICT COURT

(1) Judge Tuttle stated that the first question of fact is —did Walter Eddy on January 30, 1908, "purchase in an honest bargain" and "in an honest deal" from his sister all her stock in C. K. Eddy and Sons (R. 89).

To which Petitioners and Appellants reply—that whether it was an "honest deal" depends upon whether Walter Eddy, as Trustee, gave full information to his sister of all material facts—which he certainly did not, upon this record.

(2) The other question of fact is—did Arthur D. Eddy on March 11, 1920 "in an honest bargain" buy from his sister Lila "all her interest in Walter Eddy's Estate, or did he defraud her"? (R. 90.)

To which appellants make the same reply.

(3) On these two questions of fact the burden rests upon Mrs. Doebler's Administrator, and he must prove fraud, by "convincing proof" (R. 90).

Appellants submit that this is not the rule, as between trustees and *cestui que* trust—see cases under Point I.

(4) That there is not one scintilla of proof of such fraud on either question of fact (R. 91).

Appellants again submit the entire record conclusively shows the contrary.

(5) It has not been proved that the consideration paid was inadequate (R. 91).

Appellants submit the contrary was conclusively proved.

(6) That the said Lila was anxious to make the deal with Arthur Eddy in 1919, was the one that urged it and sought it (R. 91).

Appellants reply that Mrs. Doebler was justified in wishing to sell her interests—and that this was no reason or excuse for her brother, Arthur Eddy, to defraud her.

(7) That C. K. Eddy and Sons have very fine records and easy to read and that "the files in this case have spoken more eloquently than any witness could speak from memory" (R. 91).

Appellants admit the C. K. Eddy and Sons records prove their case for them conclusively.

(8) All three children, Walter, Arthur and Lila had unusual business ability. Lila had intervals "when her mind wasn't good" but for the greater period, she was a lucid, keen, capable individual and was capable of understanding a deal beyond the average individual (R. 92).

Appellants submit that Mrs. Doebler was no match for her brother Arthur—when he possessed all the inside information of the true worth of C. K. Eddy and Sons—and its huge profits in the years of 1901 to 1920.

(9) That the letters between Arthur Eddy and his sister Lila in 1919 show conclusively he did not want her "to get out of the corporation." He wanted her to stay in (R. 92).

Appellants reply that Arthur Eddy's letter of May 9, 1919 (Exhibit 105, R. 442) opened the discussion and subject as to whether his sister, Mrs. Doebler, should sell out or not.

(10) C. K. Eddy and Sons was a complicated and big business. The brothers had "peculiar ability" (R. 92).

Appellants reply that this was all the more reason why Arthur Eddy was under the absolute duty to disclose all facts to his sister about C. K. Eddy and Sons.

(11) Mrs. Doebler lived at a distance and was "spending her share of the money." Her brothers wanted her to stay in the Company (R. 92).

To which appellants make the same reply—and further that Mrs. Doebler never spent even the small amounts relatively coming to her in the years 1908 to 1920—See Record 67, 68.

(12) The sister's second husband, John McCurdy, was a lawyer and witnessed the first contract of January 30, 1908. He would be interested in seeing "she got what was coming to her" (R. 92).

Appellants reply there is no proof that Mr. McCurdy knew his wife's 7812½ shares were worth $1,000,000.00 in 1908 and were earning over $100,000 each year in the years 1904 to 1907, inclusive.

(13) She wanted a fixed income and took it, $15,000 a year for life. That is a very large sum. Capitalized, it was worth $359,000. She got $15,000 a year and $48,000 in cash for her interests in January, 1908 (R. 93).

Appellants submit the same reply and that two per cent per annum—and nothing for the principal—constitutes gross fraud.

(14) Mrs. Doebler in 1919 wanted to get out of the Company and sent her lawyer and husband to Saginaw. They couldn't sell her interests for her. Arthur Eddy wasn't anxious to make a deal.

Then Mrs. Doebler scolded Arthur and coaxed him and urged him to make a deal. He was not urging her to sell or trying to force her to do it (R. 93).

Appellants submit that Arthur Eddy's delay in settling Walter's Estate was a deliberate, if indirect, way of tiring and worrying his sister into sacrificing her interests by a sale to him—finally completed in March, 1920, nearly two years after Walter Eddy died in August, 1918.

(15) And Judge Tuttle says that when Mrs. Doebler wished to spend $68,000 for a home—her brother Arthur didn't ask her to sell her stock to get the money, but he writes her that she has a balance and that he will "hustle around and get enough so she can get all the money she needs" (R. 94).

Appellants submit no further reply than their brief—to such logic of the Lower Court.

(16) That $68,000 doesn't grow on bushes—that part of the brother's job was "to finance his sister and her numerous husbands" and he is willing to do it and offers to do it—and is willing to give her the money owing her on the Company's books (R. 94).

Appellants make the same reply.

(17) That in 1919, Mrs. Doebler was represented by a good lawyer and C. K. Eddy and Sons was represented by a good lawyer and they drew up the agreement of March 11, 1920. That it was a big deal drawn up by capable men (R. 94).

Appellants make the same reply.

(18) After the deal of March, 1920, was made, Arthur Eddy cautioned her to be careful how she spent it and that he did not "lose interest in her". That Arthur Eddy cautioned her not to let her third husband run through this money—money that is worth saving—"needed" (R. 94).

Appellants submit that after Arthur Eddy had taken Mrs. Doebler's interests from her in 1920, for one-third

of their true worth—that he carefully tied up the $760,000 by a trust agreement (R. 46) dated March 11, 1920 (permitting her to spend only the income) and there is, therefore, no sense to Judge Tuttle's comment.

(19) That the bargain of March 11, 1920 was forced upon Arthur by his sister "and not she led by him. The moving force in that bargain was the sister." "She sought it and she made it with good ability and shrewdness" and "with her eyes open" (R. 95).

Appellants reply by referring to their brief—and the record, which shows conclusively deliberate, fraudulent concealment and active misrepresentation by Arthur Eddy.

(20) That she knew about the amount of stock and the assets owned by C. K. Eddy and Sons and there is nothing to the claim that she did not. That this is shown by the deposition of her husband, Mr. Doebler (R. 95).

Appellants reply the record is just the reverse—and challenge counsel for the counter-defendants to cite one single page in the record, even tending to support the Lower Court's Finding, much less tending to meet the burden of proof resting upon a trustee to justify his purchase from his *cestui que* trust.

(21) That the books of C. K. Eddy and Sons were well kept and that Walter and Arthur Eddy "kept them as good, practical, hard-headed business men would keep them" (R. 95).

Appellants reply that Kins Collins' audit of these very books, now shows beyond any doubt that Mrs. Doebler was shamefully defrauded by Arthur Eddy.

(22) That Walter Eddy shifted his bargain and deal with his sister, Mrs. Doebler, of January 30, 1908, "for this stock over to the corporation because it involved the

corporation in a way, and he shifted that to the corporation."

That if any advantage over the sister was gained by the first contract of January 30, 1908, by Walter Eddy, "he gave it over to the corporation. You have to admit that. At that time if Walter made a fortune in his bargain with Lila, he turned right around and gave it to the Corporation" (R. 96).

To which appellants reply that giving "the fortune" taken from their sister in 1908—does not entitle Walter and Arthur Eddy to it—just because they covered it up in a corporation, they alone owned.

And petitioners and appellants further reply that no such issue of any alleged transfer of Mrs. Doebler's 7812½ shares by Walter Eddy in 1914 to C. K. Eddy and Sons, is raised by the pleadings or decided by either of the Lower Courts.

(23) That if Mrs. Doebler had stayed in the corporation "as Arthur wanted her to" she would have had her share of all the profits which finally came out of the Eddy and Glynn co-partnership (R. 96).

Appellants reply that if Arthur Eddy had not concealed over $1,500,000 of assets (the reserve account of $950,000 and the co-partnership profits of over $600,000) maybe Mrs. Doebler would have stayed in the Company—rather than take one-third of her shares' value.

(24) That Mrs. Doebler wanted to get out of the Corporation because "she wanted to get more money." That Mrs. Doebler wasn't willing to play the game and let it multiply and look into the future and get more money—"she wanted to get it all now" (R. 96).

Appellants make no further reply to this "logic," but refer to their brief.

(25) That Arthur Eddy didn't want Mrs. Doebler to get out of the corporation and he was willing to do the work. Mrs. Doebler didn't want to be bothered with the income tax of $100,000 on her dead brother's estate. Arthur has to do these things (R. 96).

Appellants make the same reply.

(26) That there is nothing to indicate that Mrs. Doebler "didn't know all that could be known about the affairs of this corporation. Everything indicates just the contrary * * *. All goes to show that she knew all that she was doing" (R. 96).

Appellants challenge counter-defendants to cite one page in the record tending to prove that Mrs. Doebler in 1919 or 1920—knew anything about the hidden reserve account of $950,000 or the Eddy and Glynn profits of $600,000—

or that she had any knowledge other than that given by the false inventory and appraisal filed in March, 1919, of Walter's Estate—See Exhibit A, R. 33.

(27) That in the United States, if you deal honestly and somebody is urging you to get out, you (Arthur Eddy) have a right to make a deal in a way that you "make money" (R. 97).

Appellants respectfully submit, that neither in the United States or elsewhere may a trustee take such advantage of a *cestui que* trust as this record discloses—and to support their contention, appellants cite *Cowen v. Adams, supra,* and *Eddy v. Eddy, supra.*

(28) That it wouldn't shock Judge Tuttle's conscience at all under this situation, "if Arthur Eddy made money

on the deal that he made with his sister, in March, 1920." "That wouldn't upset him" (R. 97).

Appellants submit that counter-defendants and respondents cannot cite one single decision of the Supreme Court or of the Sixth Circuit Court of Appeals as authority for such a doctrine.

(29) That the uncertainties of the business of C. K. Eddy and Sons and the uncertainties of Arthur Eddy's life were apparent, that his sister didn't know how long her brother Arthur would "live."

That anybody with good intelligence would know that C. K. Eddy and Sons' business "couldn't go on indefinitely with those big profits."

That anybody with intelligence would know that when Arthur Eddy died, "the business couldn't go on just as it had in the past" (R. 97).

Appellants again submit that this finding is a complete justification for Mrs. Doebler's "worry" over her interests—and that she was entirely justified in wishing to sell out in her brother Arthur's lifetime.

(30) That no one other than Walter and Arthur Eddy could carry on the business after they died. No Trust Company nor any one the Court could appoint could "get the successful men" (R. 97).

Appellants make the same reply.

(31) That Mrs. Doebler and Arthur Eddy both knew the uncertainties of C. K. Eddy and Sons and that when Arthur Eddy was dealing with his sister, "he let her take the choice of the things they had, the sure things, and left for him the opportunity to go and play the game with the uncertain things" (R. 97).

Appellants reply that this finding is based apparently on Arthur's fraudulent misrepresentation that such was the fact, whereas the record now discloses that Arthur Eddy kept for himself over $1,000,000 of gilt-edged securities, as well as $2,000,000 of good stocks—see Record 457, 458.

(32) That the amounts which Walter Eddy and Arthur Eddy in January 1908 and March 1920, gave their sister, Mrs. Doebler, were equitable, honest and a fair consideration.

That this was so when "you see that she was the one who wanted it, urged it, offered it, that even though the amount had been less, it was a fair compensation" (R. 97).

Appellants reply that—

(a) The 1908 deal giving her nothing for the principal of her $1,000,000 in stock is ruled by *Cowen v. Adams, supra* (6 C. C. A.).

(d) The 1920 deal with Arthur Eddy, giving Mrs. Doebler about one-third of what her interests were actually worth, is ruled by *Eddy v. Eddy, supra* (6 C. C. A.).

Appellants respectfully submit it has never been considered "fair compensation" by any appellate court of equity—for a trustee to defraud his *cestui que* trust out of two-thirds of her trust estate, by a fraudulent concealment and active, positive misstatements of material facts.

(33) That Mrs. Doebler made the deal with her eyes open, knowing that when someone wishes to sell and someone wishes to buy at a price that is fair and that they do it with their eyes open, knowing all about it, and they understand the situation, "then it is a fair deal and it is binding" (R. 97, 98).

Appellants respectfully submit the entire record on this appeal proves conclusively just the reverse of this finding.

(34) Judge Tuttle then states "that being the kind of a deal we have, I don't have to bother with what the law is." That all he, the Court, needs to do is to "be able to judge facts, understand people by the written records they have left and the good books they have kept and the complete file they have kept of the transaction and say that this deal between those two brothers and their sister was an honest, fair, upright deal" (R. 98).

Appellants respectfully refer to their brief, *ante,* for their position on this finding—and

submit that C. K. Eddy and Sons' books and records, in evidence in this case, now show conclusively that Mrs. Doebler was shamefully defrauded by her brothers—and

that the testimony of Kins Collins, our expert accountant, so shows—and is and was undisputed by counter-defendants.

MAY 25 1941
CHARLES ELMORE CROPLEY
CLERK

In The

Supreme Court of the United States

No. 1050.

HOWELL VAN AUKEN, Administrator with Will Annexed of Estate of Lila Eddy Doebler, and DEAN LUCKING, Guardian Ad Litem of Richard Cleveland and Lila Eddy Cleveland, et al.,

Petitioners and Appellants Below,

v.

SECOND NATIONAL BANK AND TRUST COMPANY, of Saginaw, Michigan, as Trustee, etc., C. K. EDDY AND SONS, a Corporation, and CHARLOTTE D. MORGAN,

Respondents and Appellees Below.

(No. 8336.)

RESPONDENTS' BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI.

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The District Court found as a fact that the agreement of March 11, 1920, was made and entered into by Lila Eddy Doebler while of sound mind, for a valuable consideration, and that it was free from fraud, overreaching and unconscionable conduct, and fully and completely extinguished any and all asserted claims of counter-claimants, and that the agreement of January 30, 1908, likewise was entered into while she was of sound mind, for a valuable consideration, and that it was free from fraud, overreaching and unconscionable conduct, and bars all claim 18

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(The references to the record are, unless otherwise indicated, to the transcript filed in Case No. 8336, in the Circuit Court of Appeals. There are certain references made to Volumes I and II filed in Case No. 8366, and so indicated. This is pursuant to stipulation printed on page 499 of record in Case No. 8336.)

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In The

Supreme Court of the United States

No. 1050.

HOWELL VAN AUKEN, Administrator with Will Annexed of Estate of Lila Eddy Doebler, and DEAN LUCKING, Guardian Ad Litem of Richard Cleveland and Lila Eddy Cleveland, et al.,

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v.

SECOND NATIONAL BANK AND TRUST COMPANY, of Saginaw, Michigan, as Trustee, etc., C. K. EDDY AND SONS, a Corporation, and CHARLOTTE D. MORGAN,

Respondents and Appellees Below.

(No. 8336.)

RESPONDENTS' BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI.

OPINIONS OF COURTS BELOW.

The opinion of the United States District Court (Honorable Arthur J. Tuttle, District Judge) was not printed in the Federal Supplement because the case involves simply a question of fact, decided adversely to the appellants, but the Court's Findings of Fact and Conclu-

sions of Law are found R. 89 to 98 inc., and his final judgment is found R. 99 and 100.

The opinion on appeal is found in *Van Auken et al. v. Second National Bank et al., 117 Federal Reporter (2d Series), pages 938 and 939,* being a *Per Curiam* opinion by the Circuit Court of Appeals, Sixth Circuit (Hicks, Allen and Martin, Circuit Judges).

JURISDICTION.

The application for a Writ of Certiorari is based upon Section 240 (amended) of the Judicial Code. The respondent knows of no special or important reason why the Writ of Certiorari should be granted, as the case is of importance only to the litigants themselves, and is controlled by questions of fact.

STATEMENT OF THE CASE.

The United States District Court for the Eastern District of Michigan, Northern Division, entered a final judgment in this cause on December 13, 1938, reciting the findings of fact and conclusions therefrom, that on March 11, 1920, C. K. Eddy & Sons and Lila Eddy Doebler, counterclaimants' decedent, while of sound mind entered into an agreement in writing, free from fraud, overreaching and unconscionable conduct, for a valuable consideration, by which all asserted claims of counterclaimants were completely extinguished and released unto C. K. Eddy & Sons.

The District Court further found that this agreement, together with an earlier agreement in 1908 constituted a complete release and extinguishment of the claims asserted by counterclaimants.

This judgment is found R. 99 and 100.

The Circuit Court of Appeals, Sixth Circuit, on February 14, 1941, in its opinion *(117 Federal Reporter (2d Series) 938 at 939)* said:

> "We find in the record abundant substantial evidence to support the findings of fact of the District Court upon which judgment dismissing the counterclaims was based.
>
> It appearing, further, from the record that no reversible error was committed by the District Judge, the final judgment of the District Court entered December 13, 1938, is in all respects affirmed."

The District Court decided two controlling questions of fact, both in favor of the appellees. He states them R. 89 and 90.

STATEMENT OF QUESTIONS INVOLVED.

1. Was the agreement between C. K. Eddy & Sons and Lila Eddy Doebler, of date March 11, 1920, honestly, fairly and uprightly made and entered into while Lila Eddy Doebler was of sound mind, for a valuable consideration? If it was, it is a bar to the counterclaims.

The District Court held as a fact that the agreement was executed while Mrs. Doebler was of sound mind, for a valuable consideration, and that it was free from fraud, overreaching and unconscionable conduct (R. 89-99).

2. Was the agreement between W. S. Eddy and Lila Eddy McCurdy (later Doebler), of date January 30, 1908, honestly, fairly and uprightly made and entered into while Lila Eddy McCurdy (Doebler) was of sound mind, for a valuable consideration? If it was, it is a bar to the counterclaims to March 1, 1920.

The District Court held as a fact that the agreement was executed while she was of sound mind, for a valuable consideration, and that it was free from fraud, overreaching and unconscionable conduct (R. 89-100).

STATEMENT OF FACTS.

Lila Eddy, the sister of Walter and Arthur Eddy, a daughter of Charles K. Eddy, was married three times,—first, to Merrill B. Mills, of Detroit, in 1899 (R. 353, 129), whom she divorced in 1907. Then she became Mrs. John T. McCurdy, of Corunna, Michigan,—divorced,—and married on December 7, 1912, to Valentine S. Doebler, who survived her, and is now living in Baltimore, Maryland (R. 216, 139, 64-65, 53, 18).

Lila Eddy, Lila Eddy Mills, Lila Eddy McCurdy and Lila Eddy Doebler is the same woman (R. 273), and her only child is co-counterclaimant and defendant Cynthia Mills Cleveland (R. 4) (Cynthia's father being Mr. Mills, and she having married Mr. Cleveland).

Lila Eddy Doebler, the mother of Cynthia Mills Cleveland, and sister of Walter (R. 10) and Arthur (R. 5), died May 10, 1938, in Baltimore, Maryland (R. 4), while this cause was pending, and Howell Van Auken, claiming to be her ancillary administrator in Michigan, thereafter filed one of these counterclaims (R. 1).

The plaintiff and respondent, Second National Bank & Trust Company of Saginaw, Michigan, is the trustee of a trust created by the ninth paragraph of the last will of Arthur D. Eddy, deceased.

The defendant and respondent, C. K. Eddy & Sons, is a Michigan corporation, originally organized in 1893, and owns real estate, stocks, bonds and other securities, and is engaged in a variety of businesses (R. 355-356).

Intervener Mercantile Trust Company of Baltimore, Maryland, formerly Mercantile Trust & Deposit Company of Baltimore, Maryland, is the surviving trustee of all of the estate of Lila Eddy Doebler (R. 19).

The defendant and respondent, Charlotte Eddy Morgan, is the widow of Arthur D. Eddy, and is now married to Mr. Morgan (R. 6).

Walter S. Eddy died August 4, 1918 (R. 140). He had been the president of C. K. Eddy & Sons (R. 181).

Arthur D. Eddy died April 22, 1925 (R. 350). He had been vice-president (R. 183), and treasurer, and, after his brother's death, became president of C. K. Eddy & Sons (R. 194).

Agreement Of 1920 (R. 33, R. 235).

In 1920, after the death of Walter S. Eddy, an agreement was entered into between Lila Eddy Doebler and C. K. Eddy & Sons. Mrs. Doebler was living in Baltimore, Maryland (R. 353). *This agreement was signed March 11, 1920,* and is found at pages 33 and 235 of the record, and completely settles all matters between Mrs. Doebler and C. K. Eddy & Sons. It was drawn by her lawyer and the corporation's lawyer (R. 220). It is a complete release of the corporation. Paragraph 7 thereof is an assignment to C. K. Eddy & Sons of:

> (a) All her right, title and interest in and to the estate of Walter S. Eddy, deceased, and the 9,375 shares of the capital stock of C. K. Eddy & Sons included in his inventory.

(b) All claims against the estate of Walter S. Eddy.

(c) All her right, title and interest in and to the corporation, C. K. Eddy & Sons, its property and assets.

(d) All claims against C. K. Eddy & Sons.

(e) All claims against Arthur D. Eddy.

(f) All claims against the estate of Walter S. Eddy or against Arthur D. Eddy or against C. K. Eddy & Sons, growing out of the agreement of January 30, 1908.

Paragraph 11 is an acknowledgment that Mrs. Doebler has had an opportunity to examine the affairs of C. K. Eddy & Sons, and that her husband and her attorney have examined into the value of the property and assets of the estate of Walter S. Eddy and into the property and assets of C. K. Eddy & Sons (R. 39).

This is the agreement that the United States District Court found free from fraud, and barred Mrs. Doebler's administrator's claims. The Circuit Court of Appeals, Sixth Circuit, found abundant substantial evidence to support the findings of fact of the District Court.

The agreement is signed by Mrs. Doebler and by C. K. Eddy & Sons, by Arthur D. Eddy, its president, and by George L. Humphrey, its secretary. Mrs. Doebler signed in the presence of J. LeRoy Hopkins, her attorney, and V. S. Doebler, her husband (R. 40).

Mrs. Doebler and her husband were in Saginaw on June 12, 1919 (R. 224). Her attorney, Mr. J. LeRoy

Hopkins, and her husband, were in Saginaw July 25, 1919, and stayed until July 27, 1919 (R. 224-225, 489-490). The actual value of Walter Eddy's stock was worked out from figures secured by them (R. 254).

On September 8, 1919, Mrs. Doebler (R. 250) wrote Mr. Eddy with reference to a sale of her interests in Saginaw. Mr. Eddy answered the letter, and there then follows an exchange of letters between the two, which are found in the record, pages 250 to 271, inclusive.

These letters show that she wanted one million dollars for her interest, but finally compromised on securities worth, at par, $800,000.00; that these securities offered were the safe, gilt-edged investments of E. K. Eddy & Sons; and on December 1, 1919, she was ready to close.

Arthur D. Eddy did not offer to purchase her stock (R. 255). On December 15, 1919, she again reopened the matter (R. 263), stated her reasons why she wished to have the matter concluded quickly, and informed her brother that her attorney was going to prepare a deed of trust.

The testimony is undisputed that from April 19, 1919, to April, 1920 (R. 233), she was no invalid and under no disability whatsoever. The letters of her husband, Mr. Doebler (Exhibit 14, Errata, page 803, at 807, No. 8366) of her daughter, Cynthia Mills Cleveland (R. 272), establish this beyond question. She executed a trust agreement in 1925 (R. 350), and took the benefits thereunder up to the time of her death (Exhibit 12, page 915, Vol. II, No. 8366). Her will, made in February of 1935, was allowed (R. 5). It was during the best period of her life, according to her husband, that she entered into the agreement with C. K. Eddy & Sons, resulting in the sale of

her interest in the corporation, and her letters so indicate (Exhibit 14, Errata, page 807, No. 8366).

Stock Of Walter S. Eddy.

Walter S. Eddy, at the time of his death, was the owner of 9,375 shares of stock in C. K. Eddy & Sons (R. 43).

The corporation C. K. Eddy & Sons was formed in 1893 (R. 355), with a capitalization of $250,000.00 (R. 356), consisting of 25,000 shares of stock (R. 356), with a par value of $10.00 per share (R. 35), which stock was held as follows:

	Shares	
Charles K. Eddy	5,000 (141)	Certificate 2
Walter S. Eddy	5,000 (141)	Certificate 3
Arthur D. Eddy	5,000 (141)	Certificate 4
Lila Eddy	5,000 (141)	Certificate 6
C. Kirke Eddy	5,000 (141)	Certificate 5

In November, 1900 (R. 355), C. Kirke Eddy died, and by agreement his 5,000 shares were distributed equally between the other stockholders, after which the stock was held as follows (R. 143) (Certificates 13, 14, 15, 16, 23, 24, 25, 26):

Charles K. Eddy	6,250 shares	
Walter S. Eddy	6,250 shares	
Lila Eddy Mills	6,250 shares	
Arthur D. Eddy	6,250 shares	(Cert. No. 19 (R. 144) and Cert. No. 6 (R. 141))
	25,000 shares	

Charles K. Eddy, the father, died May 9, 1901 (R. 353), and, according to his will (Exhibit 48 (R. 281)), the stock held by him was to be apportioned as follows:

Walter S. Eddy	2/5
Arthur D. Eddy	1/5
Lila Eddy Mills	1/5
C. Kirke Eddy	1/5

The will further provided that in case any of his children passed away before his death, that such portion of his estate bequeathed to said deceased child should be divided among the surviving children in the proportion above stated.

C. Kirke Eddy died before his father, and left his father 1,250 shares of stock, as above pointed out, which, on the father's death, was divided, along with the father's original 5,000 shares, as follows:

Walter S. Eddy (146, 144) Certificates Nos. 23 and 16	½	2,500 shares (original share of father (Cert. No. 2))
		625 shares (Kirke's to his father)
		3,125 shares
Arthur D. Eddy (146) Certificates Nos. 25 and 26	¼	1,200 shares (original share of father (Cert. No. 2))
		312½ shares (Kirke's)
		1,562½ shares
Lila Eddy Mills (147) Certificate No. 31	¼	1,200 shares (original share of father (Cert. No. 2))
		312½ shares (Kirke's)
		1,562½ shares

The ownership of the stock would then be as follows:

Walter S. Eddy:	5,000 plus 1,250 plus 3,125	9,375 shares
Arthur D. Eddy:	5,000 plus 1,250 plus 1,562½	7,812½ shares
Lila Eddy Mills:	5,000 plus 1,250 plus 1,562½	7,812½ shares
		25,000 shares

See R. 158, 35, 264, 166, 167, 168, 169.

Agreement Of 1908 (R. 159-161, R. 53-55).

In 1908, Lila's 7,812½ shares were purchased by Walter S. Eddy (R. 158, 53). These shares of stock were standing in the name of Walter at that time, having been transferred to him in 1907 (R. 150). There was pending in 1907 a divorce action between Mrs. Doebler (then Mrs. Mills) and her first husband (R. 139, 65). By the terms of the agreement of 1908, Walter S. Eddy purchased all of Lila Eddy (Mills) McCurdy's stock, paying her $47,953.85 (R. 67, 65, 236), and guaranteeing her an annuity for life of $15,000.00 a year. This contract is found on pages 53, 54 and 55 of the record.

In paragraph 1, Lila Eddy McCurdy (for she was no longer Mrs. Mills, and had married Mr. McCurdy) sells, assigns, transfers and conveys to Walter S. Eddy all of her interest in her stock in C. K. Eddy & Sons.

In paragraph 2 Walter S. Eddy undertakes to pay her $10,000.00 for a home, and the sum of $1,250.00 each and every calendar month during her natural life, and assumes and agrees to pay all of her obligations to C. K. Eddy & Sons, and to pay and discharge all of her obligations with respect to the annuities provided for in her father's will, and all decrees and judgments against his estate.

The agreement is signed by Mrs. McCurdy and Mr. Eddy, in the presence of John T. McCurdy and P. Glynn, and Mr. McCurdy consents to the settlement. Mr. McCurdy was her husband, a lawyer of Corunna, and Mr. P. Glynn was the partner in the firm of Eddy & Glynn, owning an undivided one-half interest therein.

The agreement of 1908 was likewise found free from fraud and overreaching by the District Court, and the Circuit Court of Appeals found abundant substantial evidence to support the findings.

In 1914, Walter S. Eddy turned over his interest in this contract to C. K. Eddy & Sons, and directed that the corporation carry it out. His instructions are contained in a letter, Exhibit 17, found on page 158 of the record. C. K. Eddy & Sons assumed the payments, gave Mr. Walter S. Eddy credit for the amounts that he had paid out (R. 285-286), and the stock was treated as treasury stock (R. 281). An account was opened up for treasury stock and the dividends declared paid to C. K. Eddy & Sons (R. 57-58). This account is Exhibits 49 and 50, and appears at pages 281, 282 and 283, of the record. The payments were so made until March, 1920. The stock acquired from Lila in 1908 and standing in Mr. W. S. Eddy's name was transferred to treasury stock (R. 147) (Cert. 31).

The inventory of Mr. Walter S. Eddy's estate shows that he was the owner of 9,375 shares (R. 43), which he obtained from his original investment (R. 141), his father's estate (R. 146) and his brother Kirke's estate (R. 146). Mrs. Doebler was entitled to one-half of it, viz: 4,687½ shares, which were purchased by C. K. Eddy & Sons and retired in the same manner (R. 147) (Certificate No. 35). Thus, one-half of the 25,000 shares was retired, leaving Arthur D. Eddy the owner of the remaining 12,500 shares (R. 154, 284, 58). By inheritance and purchase he became the holder of all the stock.

Consideration For 1920 Agreement.

The consideration for the agreement of March 11, 1920, is as follows:

Securities and notes, totaling (market value) (R. 44-45, 223)	$760,000.00
Annuity .....$228,000.00 (R. (283)	
½ W. S. Eddy .. 532,000.00	
One-half of federal estate tax (R. 283).....	80,684.28
One-half of Michigan Inheritance Tax (R. 348, 283, 252)	6,421.01
	$847,105.29

Mrs. Doebler also received the services of her brother as administrator (R. 252) without charge, and paid no part of the expenses in the matter of the tax appeal, or the fees of the attorneys. She received bonds, stocks and cash, of the par value of $800,000.00, and of the market value of $760,000.00 (R. 223).

The government securities, municipal bonds and other investments were the safe investments of the corporation, C. K. Eddy & Sons. There was left to the corporation C. K. Eddy & Sons the real estate and speculative investments (R. 253, 44-45). That this was satisfactory to Mrs. Doebler, that she knew why it was done, and that she was satisfied to take the safe, conservative investments, and leave the company with the less desirable assets, appears from her letter of September 23, 1919 (R. 253), as follows:

"I realize that in offering to settle up with me on

the basis of $800,000 in such securities as those listed in the memorandum which you gave to Valentine and Mr. Hopkins, you are making what occurs to you to be a fair division, and I appreciate the fact that you have offered to give me the securities which have a present market value, and which are perfectly safe investments, and that you have retained the securities which may fluctuate in value and which have the element of chance so that the owner may lose or gain." * * *

In the letter of October 13, 1919, Mrs. Doebler said (R. 257):

"Again referring to your letter of the 2nd instant, I realize that the suggestion that you buy out my entire interest in Walter's estate and in C. K. Eddy & Sons originated on my part, and neither did I intend to intimate in my letter that you had made me a definite proposition."

In a letter of December 1st, 1919, Mrs. Doebler says (R. 261):

"In my former letters I tried to persuade you to pay me an even million dollars in settlement of my interest in Walter's estate and my annuity of $15,000, but I suppose you feel that the tentative suggestion of $800,000 as represented by the paper you gave Mr. Hopkins, is your final conclusion as to a fair division, and as I am anxious to get this matter closed, I have come to the conclusion to close the matter on the basis of your conference with Valentine and Mr. Hopkins and the list of securities submitted by you."

She also received her money on deposit,—$38,278.56 (R. 69).

Book Value Of C. K. Eddy & Sons (R. 340).

The books of C. K. Eddy & Sons were kept on a cost basis, and nothing was shown there as a profit or loss until the asset had been sold (R. 349-350, 171).

On January 1, 1908, the book value of C. K. Eddy & Sons was $1,478,481.50. On January 1, 1919, the book value was $3,327,687.89. On January 1, 1920, the book value was $3,598,727.80.

The stock (9375 shares) of C. K. Eddy & Sons belonging to Walter S. Eddy was appraised (R. 43) in the Probate Court of Saginaw County as of August, 1918, at $1,406,250.00. Mrs. Doebler and Arthur D. Eddy were the sole heirs of Walter S. Eddy, and shared equally (R. 297, 33).

Receipts Under 1908 Agreement.

Under the agreement of 1908, Mrs. Doebler received $458,715.10, as follows:

Jan. 30, 1908. Balance Lila E. McCurdy account (R. 284, 67)	$ 37,953.85
Payments, February to December, 1908, incl. (R. 276)	13,750.00
Check for house (R. 35, 66, 53)	10,000.00
1909 payments on contract (R. 35, 276)	15,000.00
1910 payments on contract (R. 276)	15,000.00
1911 payments on contract (R. 276)	15,000.00

1912 payments on contract (R. 276).....	15,000.00
1913 payments on contract (R. 276).....	15,000.00
1914 payments on contract (R. 276, 281)....	15,000.00
1915 payments on contract (R. 276, 282)....	15,000.00
1916 payments on contract (R. 276, 282).....	15,000.00
1917 payments on contract (R. 275, 282).....	15,000.00
1918 payments on contract (R. 275, 282).....	15,000.00
1919 payments on contract (R. 275, 283)....	15,000.00
January, February and March, 1920, payments (R. 283, 275)	3,750.00
May 10, 1920 (based life annuity Mrs. Doebler at age of 50 years) (R. 283, 348).....	228,261.25
	$458,715.10

Summary Of Moneys Paid Mrs. Doebler From C. K. Eddy & Sons, During Her Life.

Mrs. Doebler (then Mrs. Mills), after her first marriage left Saginaw, Michigan, and was living in Detroit (R. 353, 356). She contributed nothing to the upbuilding of C. K. Eddy & Sons (R. 267). For forty years Mr. Arthur D. Eddy had given the best he had to offer to C. K. Eddy & Sons (R. 267) and had withdrawn only sufficient funds for a modest living (R. 59-60).

Mrs. Doebler's original interest in the corporation was a gift to her at the request of Walter (R. 267). Walter and his father each owned one-half of the original partnership, which became the corporation C. K. Eddy & Sons (R. 355). Walter devoted his life to the family company, at modest compensation (R. 59-60). Lila acquired her other interests by inheritance from her father (R. 158), from her brother, Kirke (143), and

from her brother, Walter (R. 34, paragraph 3). She received from C. K. Eddy & Sons during her lifetime the following sums of money:

	Under contract of January 30, 1908:		
Jan. 30, 1908.	Amount transferred from Lila E. Mills (McCurdy) account	$36,216.66	
Jan. 30, 1908.	Account transferred from Mrs. J. T. McCurdy account		8,262.81
Jan. 30, 1908.	Amount credited to Lila E. McCurdy's account as per agreement with W. S. Eddy..	10,000.00	
Jan. 30, 1908.	Balance assumed by W. S. Eddy per agreement Jan. 30, 1908	$37,953.85	
	Annuity paid by W. S. Eddy and assumed by C. K. Eddy & Sons (286, 281)	92,500.00	
	Paid by C. K. Eddy & Sons (281-282-283)....	90,000.00	
	Received under March 11, 1920, agreement: Market value of $800,000 par value (223)	760,000.00	
	Received under Arthur D. Eddy's will (Exhibit 12, Vol. II, No. 8366)	377,484.99	
		$1,357,938.84	

Mrs. Doebler paid no estate tax or inheritance tax, attorney fees or administration expenses (approximately $100,000) on the interest she received from Walter S. Eddy's estate. She received his personal effects (R. 441). She left one child, Cynthia Mills Cleveland (R. 19). Mr. Arthur D. Eddy gave to that child one-sixth of his stock in C. K. Eddy & Sons (Will, pages 9 and 10, paragraph ninth (e), Vol. 1, No. 8366), worth at his death $600,000.00 (page 26, Vol. I, No. 8366).

Lila Eddy Doebler made no complaint about her brothers in her lifetime. She regarded them with affection, trust and confidence (R. 211, 223).

ARGUMENT.

The District Court found as a fact that the agreement of March 11, 1920, was made and entered into by Lila Eddy Doebler while of sound mind, for a valuable consideration, and that it was free from fraud, overreaching and unconscionable conduct, and fully and completely extinguished any and all asserted claims of counter-claimants, and that the agreement of January 30, 1908, likewise was entered into while she was of sound mind, for a valuable consideration, and that it was free from fraud, overreaching and unconscionable conduct, and bars all claim (R. 89-100).

The United States Circuit Court of Appeals found abundant substantial evidence to support this finding.

> "The concurrent findings of fact of the two courts below are not shown to be plainly erroneous or unsupported by evidence. We accordingly accept them as the conclusive basis for decision, *Texas & N. O. R. Company v. Brotherhood of Railway & S. S. Clerks, 281 U. S. 548 at 558*" * * *. *Virginian Ry. Company v. System Federation No. 40, 300 U. S. 515.*

Rule 52, *Findings by the court, Rules of Civil Procedure* for the District Courts of the United States:

> "(a) Effect. * * * Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses."

Warren v. Keep, 155 U. S. 265.

(a) The agreement between C. K. Eddy & Sons and Lila Eddy Doebler, dated March 11, 1920, was honestly, fairly and uprightly made and entered into while Lila Eddy Doebler was of sound mind, for a valuable consideration.

(1) The stock was not misrepresented as to amount.

The history of the stock is set forth in the record (140 *et seq.)* and on page 141 the first certificate (No. 6) issued to Lila Eddy, July 22, 1893, for 5,000 shares, is set forth. This is the original certificate issued at the time of the formation of the corporation. It was later endorsed to Walter S. Eddy about the time of the divorce proceedings between Lila Eddy Mills (Doebler) and Merrill B. Mills. It purported to have been transferred to W. S. Eddy by authority of the agreement of January 30, 1908.

From certificate No. 13 (R. 143) Lila Eddy received one-fourth, or 500 shares; by certificate No. 14, 500 shares; and by certificate No. 15, 250 shares. She then had 6,250 shares, after the death of her brother, Kirke. (5,000 shares original—1,250 shares from Kirke's estate.) Certificates 13, 14 and 15 were surrendered and certificate No. 19 for 1,250 shares was issued to her (R. 144). It was assigned to W. S. Eddy pursuant to the agreement of January 30, 1908.

Certificate No. 2 for 5,000 shares issued to Charles K. Eddy on July 22, 1893, was endorsed "Estate of Charles K. Eddy" and transferred to W. S. Eddy on January 15, 1907.

Because Kirke Eddy had died previously, Kirke Eddy's stock, 5,000 shares, was divided equally among the other stockholders, and Charles K. Eddy, the father, had received 1,250 shares from him, which was to be distributed one-half to W. S. Eddy and one-fourth to Lila and one-fourth to Arthur, and therefore Lila received 312½ shares, Arthur 312½ shares, and Walter 625 shares. The division of Kirke Eddy's stock is found at the bottom of page 143; of Mr. Charles K. Eddy's 1,250 shares at the top of page 144 and middle of page 146.

Lila therefore had:

Her original 5,000 shares
1,250 shares from Kirke
1,250 shares from her father's original estate; and
312½ shares from her father's share of Kirke's stock.

This added up equals .....7,812½ shares. That this amount is correct is shown not only from the stock certificates, but also on page 158, Mr. W. S. Eddy in his letter directing the corporation to take over the contract states that Lila Eddy McCurdy (Doebler) sold her 6,250 shares of the capital stock of C. K. Eddy & Sons held by her, together with 1,562½ shares of stock inherited by her under the will of Charles K. Eddy, deceased, which, added up, makes 7,812½ shares of stock (R. 158).

In Mrs. Doebler's letters to her brother, Arthur, she states that she sold Walter S. Eddy 7,812½ shares (R. 264), so there can be no question but that the amount

of stock that Mrs. Doebler (then Mrs. McCurdy) had in 1908 was 7,812½ shares, and that she sold that amount to W. S. Eddy (R. 159).

There can be no question but that Walter S. Eddy, at the time of his death, had 9,375 shares. He acquired it as follows:

5,000 shares, originally (R. 141) (Certificate No. 3).
1,250 shares from the estate of Kirke Eddy (R. 143, bottom of page) (Certificates Nos. 13, 14, 15, 17).
2,500 shares, one-half of his father's original 5,000 shares (Certificates 2, 16, 23).
625 shares, one-half of his father's share of Kirke's stock (16, 23).

9,375 shares.

This appears by certificates Nos. 2, 16 and 23, No. 2 being the original 5,000 shares of Charles K. Eddy (one-half of which went to Walter S. Eddy); No. 16 being the 1,250 shares of Kirke Eddy's stock which went to Charles K. Eddy (one-half of which went to Walter Eddy, or 625 shares) (reissued by No. 23), and Walter also obtained from Kirke Eddy's estate 1,250 shares, as shown by certificates Nos. 13, 14, 15 and 17. The additional stock standing in his name was held subject to the terms of the letter of February 6, 1914 (R. 158), and eventually certificate No. 31 was issued (R. 147). The account (R. 283) was carried on the books of the company until the transaction was finally completed December 30, 1922 (R. 283).

That Walter S. Eddy had 9,375 shares is also shown by the inventory in his estate (R. 43). Up to March 11,

1920, Arthur D. Eddy had the remaining one-quarter, the same amount sold by his sister, Lila, 7,812½ shares.

In the memorandum of agreement of March 11, 1920, the entire transaction is set out (R. 35) and the amount of shares which Lila had are stated to be 7,812½ shares, and that she had sold them to Walter, who transferred them to C. K. Eddy & Sons (R. 35). So that up to March 11, 1920, there can be no question about the amount of stock that each one held. It is all contained in the agreement of that date, which was signed by Mrs. Doebler, in the presence of her husband and her lawyer, and after they had examined into the value of the property and assets of C. K. Eddy & Sons and of Walter S. Eddy, and examined the figures secured (R. 254).

Then, on March 11, 1920, C. K. Eddy & Sons bought the one-half interest that Lila had in the 9,375 shares of stock owned by Walter S. Eddy at his death (R. 36, paragraph 7 (a)). One-half of 9,375 shares is 4,687½ shares, and that is what the corporation bought and retired:

Certificate No. 31, for 7,812½ shares, issued to C. K. Eddy & Sons, December 31, 1919, transferred from W. S. Eddy, who had purchased it in 1908 from Lila Eddy Doebler; Cert. Nos. 23, 20, 24, 27.

Certificate No. 35, for 4,687½ shares, issued to C. K. Eddy & Sons, transferred from Walter S. Eddy, assigned by Lila Eddy Doebler (169). Certificate Nos. 30, 22, 23.

These certificates, Nos. 31 and 35, total 12,500 shares of stock, are in the possession of C. K. Eddy & Sons

(R. 169) and are treasury stock (R. 154). The whole transaction was carried on the books of C. K. Eddy & Sons, and is found in the record in Exhibit 49, pages 281 and 282, and Exhibit 50, page 283.

After the purchase consummated March 11, 1920, Arthur D. Eddy owned 12,500 shares of stock in C. K. Eddy & Sons; that is, he had, besides his

Original 5,000 shares,
1,250 shares from Kirke,
1,250 shares from his father (R. 144) and
312½ shares of Kirke's which went to his father, and he (R. 143, 146) received one-half of Walter's, or
4,687½ shares (Cert. No. 34 (R. 147)),

making 12,500 shares.

The other 12,500 is treasury stock, evidenced by the two certificates to C. K. Eddy & Sons, Nos. 31 and 35 (R. 169).

The court summarized the testimony with respect to the holding of stock at page 168, and ended all claim that the stock was misrepresented as to amount.

(2) Mrs. Doebler was no invalid on March 11, 1920, at the time she executed the agreement.

Mrs. Doebler's letters to Mr. Arthur Eddy, commencing at page 249, to page 271, effectively answer any claim that there was anything wrong with her. These

letters show her to be a woman of superior business intelligence, with unusual capacity for detail, and having acute understanding.

Mrs. Doebler's will was dated February 19, 1935, and was admitted to probate in the state of Maryland (R. 5). In 1925, she created a trust with the Mercantile Trust Company of Baltimore (R. 350).

On March 11, 1920, she executed the agreement with C. K. Eddy & Sons, in the presence of her husband and her lawyer (R. 240), and that lawyer, J. LeRoy Hopkins, represented her in this litigation (Exhibit 233, page 1040, Vol. 2, No. 8366) up to the time of his death in January, 1938.

(3) The consideration for the 1920 agreement was adequate.

The stock of Walter S. Eddy was inventoried at $1,406,250 (R. 43). This appraisal was made by two disinterested appraisers appointed by the probate court, Mr. George B. Morley and Mr. Arnold Boutell. What proof is there for the claim by the petitioners' counsel that this appraisal was fraudulent? The record shows there is none. Mrs. Doebler made no criticism of it in her lifetime. No one else but counsel has ever even claimed it was fraudulent, and he has no proof. Mrs. Doebler inherited one-half of Walter's 9,375 shares of the stock, and the right (under the 1908 agreement) to an annuity of $15,000 a year as long as she lived. Her interest was worth approximately $703,000.00 (½ inventory price), less one-half of the estate tax, the Mich-

igan inheritance tax, administration expenses (one-half of which amount to (R. 283) approximately $100,000.00), leaving her interest worth approximately $600,000.00. She received securities of the par value of $800,000.00 for one-half of Walter's stock (R. 223) and the balance of her annuity, and was saved the expenses. Her interests were worth substantially the same amount based on the book value of the stock and based upon what an annuity of that character at that time was worth. Further than this, she received the safe, gilt-edged investments of the corporation (R. 253). The value of W. S. Eddy's stock was affected by the payment of the annuity, and there is a difference in economic values between August, 1918, with the war going on, and March 11, 1920. She acknowledges in her letter of September 23, 1919, that she was getting the perfectly safe investments (R. 253), and that C. K. Eddy & Sons retained the securities which might fluctuate in value and which had the element of chance.

Mrs. Doebler took into consideration the appraisal in the probate court, as she said in her letter of September 23, 1919 (R. 254):

> "If, however, we approach the matter from the standpoint of what has actually taken place, we find that I have an annuity of $15,000, which would capitalize at approximately $200,000, in addition to which I have the one-half interest in the stock held by Walter, which at the appraised value is worth $700,000; and if we add to this my one-half interest in the balance of his estate, approximately $20,000, and the $36,000 which C. K. Eddy & Sons owes me, my total figure on this basis would amount to $956,000.00, but this figure is unreasonably low because the appraised value of Walter's stock is much lower than its actual value as worked out from the fig-

ures secured by Valentine and Mr. Hopkins; and in addition to this, it must be taken into consideration that interest and earnings have been accruing since Walter's death, which would raise this figure to more than a million dollars."

Mrs. Doebler received approximately one million dollars up to March 11, 1920, for the one-fifth interest originally given her and for her share of her father's and brothers' estates,—all of this money coming out of the corporation, C. K. Eddy & Sons. She had left Saginaw in 1899 (R. 353), and, as Mr. Arthur D. Eddy said in one of his letters, she contributed nothing to the upbuilding of C. K. Eddy & Sons (R. 267).

Upon Arthur Eddy's death he left her one-third of the income from his estate (pages 9 and 10, paragraph ninth (e), Vol. I, No. 8366), and she received $377,-484.99 more between 1925 and 1938 (Exhibit 12, page 915, Vol. II, No. 8366). She was satisfied. Upon her death her only daughter received one-sixth of Mr. Eddy's stock, Mr. Eddy's widow had received one-third, and one-half was left to charity (page 6, Vol. I, No. 8366).

(b) The agreement between Walter S. Eddy and Lila Eddy McCurdy (later Doebler), of date January 30, 1908, was honestly, fairly and uprightly made and entered into while she was of sound mind, for a valuable consideration.

(1) The amount of her stock was not misrepresented.

Lila Eddy Doebler, on January 30, 1908, sold 7,812½ shares of stock in C. K. Eddy & Sons, which she had

acquired, as before pointed out, from her father and her brother, Kirke, by gift and inheritance. This agreement is set forth at pages 53 to 55 of the record. It was signed in the presence of Lila Eddy McCurdy's then husband, John T. McCurdy, an attorney at law, and of P. Glynn (R. 55). Mr. McCurdy further certified that he was advised of the contents of the agreement, and consented to the settlement therein provided for, and to the making and execution of the agreement. The stock was transferred to Mr. Walter S. Eddy in accordance with the agreement, although some of the stock had been previously standing in his name (R. 141-142).

Lila Eddy Mills had become Lila Eddy McCurdy about the first of 1908 (R. 65), having been divorced about 1907 from Merrill B. Mills, her first husband (R. 139).

Her letters (R. 250-271) shows that she fully comprehended all the details of the transaction. Finally, on March 11, 1920, she again ratified and confirmed the agreement (R. 23, 235).

(2) She was no invalid then.

There is no such claim made. She divorced Mr. McCurdy, married Mr. Doebler (R. 216), made a trip to Paris (R. 271-272), made a will which was admitted to probate (R. 5), and transacted her affairs from 1908 until shortly before her death in 1938 (R. 273-274, 350).

(3) The consideration for the agreement of 1908 was adequate.

The book value of C. K. Eddy & Sons on January 1, 1908, was (R. 340) $1,478,481.50. Her share of that was 31 per cent (R. 116), or $458,329.26. In 1908 her annuity was worth $359,000.00 (R. 348). She received approximately $38,000 with which to pay her bills, and $10,000 to buy her house (R. 67), making all together approximately $407,000.00 consideration for her sale. If she lived longer than the average woman of her age, she would receive more than $407,000.00. If she did not live as long as the average woman, she would receive less than $407,000.00. As a matter of fact, the annuity of $15,000 a year guaranteed her by her brother Walter S. Eddy paid her $458,715.10. This is just a few hundred dollars more than her interest in the corporation C. K. Eddy & Sons was worth in 1908.

During all of those years she had the personal guaranty of her brother Walter that whether C. K. Eddy & Sons made or lost money, she would receive every year $15,000.00 (R. 54). The consideration was adequate.

CONCLUSION.

There is ample evidence to support the findings of fact by the District Court.

The petition for the writ of certiorari should be denied.

Respectfully submitted,

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